

2-5-2010

State v. Delling Clerk's Record v. 2 Dckt. 36920

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO,
PLAINTIFF-RESPONDENT.

VS.

JOHN JOSEPH DELLING,
DEFENDANT-APPELLANT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Hon DEBORAH A. BAIL, District Judge

MOLLY HUSKEY
State Appellate Public Defender

Attorney for Appellant

LAWRENCE G. WASDEN
Attorney General

Attorney for Respondent

VOLUME II

FILED - COPY

FEB - 5 2010

Supreme Court Court of Appeals
Entered on ATS by: _____

COPY

36920

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NO. _____
A.M. _____ FILED P.M. 1:20

MAY 27 2009

By J. DAVID NAVARRO, Clerk
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Roger Bourne

Deputy Prosecuting Attorney

200 West Front Street, Room 3191

Boise, Idaho 83702

Telephone: (208) 287-7700


IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|----------------------|---|------------------------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff, |) | Case No. CR-FE-2007-0000663 |
| |) | |
| vs. |) | AMENDED INFORMATION |
| |) | |
| JOHN JOSEPH DELLING, |) | Defendant's [REDACTED] |
| |) | Defendant's [REDACTED] |
| Defendant. |) | |
| _____ |) | |

GREG H. BOWER, Prosecuting Attorney, in and for the County of Ada, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Ada, and states that JOHN JOSEPH DELLING is accused by this Amended Information of the crime of: MURDER IN THE SECOND DEGREE, FELONY, I.C. §18-4001, 4002, 4003(g) which crime was committed as follows:

That the Defendant, JOHN JOSEPH DELLING, on or about the 2nd day of April 2007, in the County of Ada, State of Idaho, did willfully, unlawfully, deliberately, and with malice aforethought, kill and murder Bradley W. Morse, a human being, by shooting Bradley W. Morse in the head with a .38 caliber revolver from which he died.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.


for **GREG H. BOWER**
Ada County Prosecuting Attorney

Session: Bail052709
Session Date: 2009/05/27
Judge: Bail, Deborah A.
Reporter: Gambee, Susan

Division: DC
Session Time: 12:56

Courtroom: CR504

Clerk(s): *Diane Oatman*
~~Korsen, Janine~~

State Attorney(s):
Bourne, Roger

Public Defender(s):
Cahill, Gus
Myshin, Amil

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: FE0700663
Plaintiff:
Plaintiff Attorney:
Defendant: Delling, John
Co-Defendant(s):
Pers. Attorney:
State Attorney: Bourne, Roger
Public Defender: Cahill, Gus

2009/05/27

12:57:51 - Operator
Recording:
12:57:51 - New case
Delling, John
12:58:34 - Operator
Stop recording:
13:27:35 - Operator
Recording:
13:27:35 - Record
Delling, John
13:27:37 - Judge: Bail, Deborah A.
Ct calls case; def present in custodyw/counsel
13:27:47 - State Attorney: Bourne, Roger
Adv Ct plea agreement -- murder I; use of firearm; grand theft--amended info
13:28:18 - State Attorney: Bourne, Roger
charging murder in second degree -- no agreement as to sentencing
13:28:51 - State Attorney: Bourne, Roger
Prosecutor in Latah Ct concurs w/gg plea murder II on both cases sentences to
13:29:22 - State Attorney: Bourne, Roger
run concurrently -- defense reserves right to appeal 18-207 insanity
13:29:59 - State Attorney: Bourne, Roger
constitutionality and 404b

00205

13:30:13 - Public Defender: Cahill, Gus
Concurs w/State
13:30:27 - Judge: Bail, Deborah A.
Ct notes plea agreement for the record
13:30:46 - State Attorney: Bourne, Roger
Ct to consider events in Moscow and events in Tucson
13:31:26 - Public Defender: Cahill, Gus
Concurs
13:31:49 - Judge: Bail, Deborah A.
Ct inquires of defendant and defense counsel
13:32:03 - Public Defender: Cahill, Gus
Concurs w/filing of Amended Information
13:32:21 - Defendant: Delling, John
Understands amended information
13:32:55 - Public Defender: Cahill, Gus
Provides Ct with guilty plea form
13:33:16 - State Attorney: Bourne, Roger
Victim's family adv'd of plea agreement
13:33:53 - Judge: Bail, Deborah A.
Ct inquires of counsel re: guilty plea
13:34:08 - Defendant: Delling, John
Sworn examined by the Court
13:51:18 - State Attorney: Bourne, Roger
Offer of proof
13:56:05 - State Attorney: Bourne, Roger
Circumstances of Tucson incident
13:58:33 - State Attorney: Bourne, Roger
Circumstance of murder in Moscow
14:00:11 - Public Defender: Cahill, Gus
Nothing further
14:00:18 - Judge: Bail, Deborah A.
Ct accepts guilty plea
14:01:03 - State Attorney: Bourne, Roger
Reqt's Ct allow two witnesses be heard on June 2 when matter was orig set for
14:02:32 - State Attorney: Bourne, Roger
trial
14:02:48 - Judge: Bail, Deborah A.
Ct will allow State to call those two on Jun 2
14:03:16 - State Attorney: Bourne, Roger
Additional witnesses at a time convenient for the court
14:03:40 - Public Defender: Cahill, Gus
Requests 1/2 day as well
14:04:00 - Judge: Bail, Deborah A.
Discussion re: sentencing date
14:05:08 - Judge: Bail, Deborah A.
July 21/22 -- will select definite on June 2 at 9:30 when witnesses will be
14:06:52 - Judge: Bail, Deborah A.
heard
14:07:01 - Operator
Stop recording:

00206

MAY 27 2009

J. DAVID NAVARRO, Clerk
DEPUTY

Guilty Plea Advisory Form for use in Judge Bail's Court

Defendant's Name: John Joseph Delling

Date: May 27, 2009

Case Number: CR - FE - 2007 - 0000 663

Nature of Charges: MURDER SECOND DEGREE

10 Minimum & Maximum Possible Penalty: Life

Minimum & Maximum Possible Penalty: _____

Minimum & Maximum Possible Penalty: _____

Minimum & Maximum Possible Penalty: _____

STATEMENT OF RIGHTS & EXPLANATION OF WAIVERS BY PLEA OF GUILTY

(PLEASE INITIAL EACH RESPONSE)

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you elected to have a trial, the state could not call you as a witness or ask you any questions. However, anything you do say can be used as evidence against you in court.

I understand that by pleading guilty I am waiving my right to remain silent about the charge I am pleading guilty to both before and after trial.

2. The waiver of your right to remain silent only applies to your plea of guilty to the crime(s) in this case unless you are waiving your rights under *State v. Estrada*. Unless you waive your rights under *Estrada*, even after pleading guilty, you will still have the right to refuse to answer any question or to provide any information that might tend to show you committed some other crime(s). You can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty.

I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence.

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the judge for an attorney who will be paid by the county.

4. You are presumed to be innocent. You would be found guilty if: 1) you plead guilty in front of the judge, or 2) you are found guilty at a jury trial.

I understand that by pleading guilty I am waiving my right to be presumed innocent.

5. You have the right to a speedy and public jury trial. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. The state must convince each and every one of the jurors of your guilt beyond a reasonable doubt.

I understand that by pleading guilty I am waiving my right to a speedy and public jury trial.

6. You have the right to confront the witnesses against you. This occurs during a jury trial where the state must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call your own witnesses of your choosing to testify concerning your guilt or innocence. If you do not have the funds to bring those witnesses to court, the state will pay the cost of bringing your witnesses to court.

I understand that by pleading guilty I am waiving my right to confront the witnesses against me, an present witnesses and evidence in my defense.

QUESTIONS REGARDING PLEA

(Please answer every question. If you do not understand a question consult your attorney before answering.)

PLEASE CIRCLE ONE

1. Do you read and write the English language? YES NO

If not, have you been provided with an interpreter to help you fill out this form? YES NO

2. What is your age? 23

3. What is your true legal name? John Delling

4. How far did you go in school? college

If you did not complete high school, have you received either a general education diploma or high school

equivalency diploma? YES NO

5. Are you currently under the care of a mental health professional? YES NO

6. Have you ever been diagnosed with a mental health disorder? YES NO

If so, what was the diagnosis and when was it made?

Schizophrenia

7. Are you currently prescribed any medication? YES NO

If so, have you taken your prescription medication during the past 24 hours? YES NO

8. In the last 24 hours, have you taken any medications or drugs, or drank any alcoholic beverages which you believe affect your ability to make a reasoned and informed decision in this case? YES NO

9. Is there any other reason that you would be unable to make a reasoned and informed decision in this case? YES NO

10. Is your guilty plea the result of a plea agreement? YES NO

If so, what are the terms of that plea agreement? (If available, a written plea agreement should be attached hereto as "Addendum 'A'")

11. I understand that my plea agreement is a non-binding plea agreement. This means that the court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, up to the maximum sentence for any offense. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea.

12. As a term of your plea agreement, are you pleading

guilty to more than one crime? YES NO

If so, do you understand that your sentences for each crime could be ordered to be served either concurrently (at the same time) or consecutively (one after the other)? YES NO

13. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues? YES NO

If so, what issue are you reserving the right to appeal?

14. Have you waived your right to appeal your judgment of conviction and sentence as part of your plea agreement? YES NO

15. Have any other promises been made to you which have influenced your decision to plead guilty? YES NO

If so, what are those promises?

16. Do you feel you have had sufficient time to discuss your case with your attorney? YES NO

17. Have you told your attorney everything you know about the crime? YES NO

18. Is there anything you have requested your attorney to do that has not been done? YES NO

If yes, please explain.

19. Your attorney can get various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called discovery. Have you reviewed the evidence provided to your attorney during discovery? YES NO

20. Have you told your attorney about any witnesses who would show your innocence? YES NO

21. Do you understand that by pleading guilty you will waive any defenses, both factual and legal, that you believe you may have in this case? YES NO

*answered
+ yes "on the record"*

22. Are there any motions or other requests for relief that you believe should still be filed in this case? YES ☒ NO

If so, what motions or requests? _____

23. Do you understand that if you enter an unconditional guilty plea in this case you will not be able to challenge any rulings that came before the guilty plea including: 1) any searches or seizures that occurred in your case, 2) any issues concerning the method or manner of your arrest, and 3) any issues about any statements you may have made to law enforcement? ☒ YES ☒ NO

24. Do you understand that when you plead guilty, you are admitting the truth of each and every allegation contained in the charge(s) to which you plead guilty? ☒ YES ☒ NO

25. Are you currently on probation or parole? YES ☒ NO
If so, do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole? YES ☒ NO

26. Are you aware that if you are not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship? YES ☒ NO

27. Do you know whether the crime to which you will plead guilty would require you to register as a sex offender? (I.C. § 18-8304) YES ☒ NO

28. Are you aware that if you plead guilty you may be required to pay restitution to the victims in this case? (I.C. § 19-5304) YES ☒ NO

29. Have you agreed to pay restitution to any other party as a condition of your plea agreement? YES ☒ NO
If so, to whom? _____

30. Is there a mandatory driver's license suspension as a result of a guilty plea in this case? YES ☒ NO
If so, for how long must your license be suspended? _____

31. Are you pleading guilty to a crime for which a

mandatory domestic violence, substance abuse, or psychosexual evaluation is required? (I.C. §§ 18-918(7)(a), -8005(9), -8317) YES NO

32. Are you pleading guilty to a crime for which you may be required to pay the costs of prosecution and investigation? (I.C. § 37-2732A(K)) YES NO

33. Are you pleading guilty to a crime for which you will be required to submit a DNA sample to the state? (I.C. § 19-5506) YES NO

34. Are you pleading guilty to a crime for which the court could impose a fine for a crime of violence of up to \$5,000, payable to the victim of the crime? (I.C. § 19-5307) YES NO

35. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to vote in Idaho? (ID. CONST. art. 6, § 3) YES NO

36. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to hold public office in Idaho? (ID. CONST. art. 6, § 3) YES NO

37. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to perform jury service in Idaho? (ID. CONST. art. 6, § 3) YES NO

38. Do you understand that if you plead guilty to a felony you will lose your right to purchase, possess, or carry firearms? (I.C. § 18-310) YES NO

39. Do you understand that no one, including your attorney, can force you to plead guilty in this case? YES NO

40. Are you entering your plea freely and voluntarily? YES NO

41. Are you pleading guilty because you did commit the acts alleged in the information or indictment? YES NO

42. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter? YES NO

43. Have you had any trouble answering any of the questions in this form which you could not resolve by discussing the issue with your attorney? YES NO

I have answered the questions on each page of this Guilty Plea Advisory form truthfully, I understand all of the questions and answers in this form, and I have discussed each question and answer with my attorney, and have completed this form freely and voluntarily. Furthermore, no one has threatened me to do so.

Dated this day of May 27, 2009.



DEFENDANT

I hereby acknowledge that I have discussed, in detail, the foregoing questions and answers with my client.



DEFENDANT'S ATTORNEY

CRIMINAL CASE FILE MEMO

Hearing

DATE: June 2, 2009 DEFENDANT PRESENT Y/N CUSTODY/BOND

FROM: Judge Deborah Bail/ Carol Luedtka/ Susan Gambee

RE: State v John Deffling CASE NO. CR0700663

Counsel for the State Roger Bourne / Heather Reilly

Counsel for the Defendant Amil Myshin / Gus Cahill

Interpreter _____

Plea Bargain Mr Bourne addresses Ct re: available

sentencing date & July 14 is available. Mr Cahill
concur. They each will need only 1/2 day.

Ct sets July 14, 2009 for sentencing.

Mr Cahill obj to victim impact statement &
obj to the photo on this victim - beyond scope.

Ct overrules the obj

Mr Reilly calls Brian Jackson, sworn, direct exam.
Has witness handed St exhibit 1 & 2 identified offered. No

obj Ct admits St exhibit 1 & 2. Has witness handed

St exhibit 3, identified, offered No obj Ct admits St exhibit 3

Mr Cahill has cross exam. Ms Reilly has re-direct exam.
Witness is excused. Mr Bourne calls Jake Thompson,

sworn, direct exam. Mr Bourne has witness handed St exhibit

4 & 5 identified, has witness handed St exhibit 6, identified

has witness handed St exhibit 7, 8, 9, 10 identified, offered.

Mr Cahill obj. Ct overrules obj & admits St exhibit 4-10.

Motion for Bond Reduction - circle/ Not Advanced/ Withdrawn Denied Granted

Additional Remarks (include anything the defendant or either counsel was told)

Mr Cahill has no questions. Witness is excused.

Ct sets sentencing for July 14 @ 9:30 am

10
JUL 10 2009
J. DAVID NAVARRO, Clerk
By EMM BULCHER
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|----------------------|---|------------------------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff, |) | Case No. CR-FE-2007-0000663 |
| |) | |
| vs. |) | MOTION TO ACCEPT TRANSFER |
| |) | OF LATAH COUNTY CASE NO. |
| JOHN JOSEPH DELLING, |) | CR-2007-01378 |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and moves this Court for its order accepting transfer under I.C.R 20 of the Latah County murder case against the above named defendant. The Ada County Prosecutor's Office, together with August Cahill and Amil Myshin, counsel for the defendant, and William Thompson, the Latah County Prosecuting Attorney have earlier stipulated to a transfer of that case

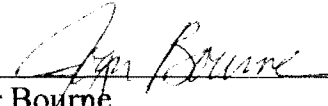
number CR-2007-01378 to this Court for consolidation with the Ada County murder case currently pending sentencing.

The parties understand the requirements of Rule 20 and agree that the defendant will waive a probable cause hearing in Ada County, waive his right to a preliminary hearing and plead guilty to the charge of Second Degree Murder for killing David Boss in Latah County in March 2007. The defendant will submit himself to the jurisdiction of this Court for sentencing in the Latah County case in a consolidated proceeding with the Ada County murder case number CR-FE-2007-0000663.

The State has attached the stipulation for the transfer together with the Latah County Magistrate's Order transferring the case to Ada County.

DATED this 9 day of July 2009.

GREG H. BOWER
Ada County Prosecuting Attorney



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July 2009, I caused to be served, a true and correct copy of the foregoing Motion to Accept Transfer of Latah County Case No. CR-2007-01378 upon the individual(s) named below in the manner noted:

August Cahill and Amil Myshin, Ada County Public Defender, 200 W. Front Street, Boise, Idaho 83702 and


William Thompson, Jr., Latah County Prosecuting Attorney, PO Box 8068, Moscow, Idaho 83843-0568

☒ By depositing copies of the same in the United States mail, postage prepaid, first class. - Thompson

☒ By depositing copies of the same in the Interdepartmental Mail. - Cahill & Myshin

☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor. - E

☐ By faxing copies of the same to said attorney(s) at the facsimile number:


Legal Assistant

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 883-2246
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff,

V.

JOHN JOSEPH DELLING,
Defendant.

)
)
) Case No. CR-2007-1378
)
)
) STIPULATION TO
) TRANSFER
)
)

COMES NOW THE STATE OF IDAHO, by and through Latah County Prosecuting Attorney William W. Thompson, Jr. and Ada County Prosecuting Attorney Greg H. Bower, and the above named defendant, by and through August H. Cahill, his undersigned attorney, and hereby stipulate to the transfer of this case to Ada County for plea and sentence pursuant to Idaho Criminal Rule 20. In support of this stipulation:

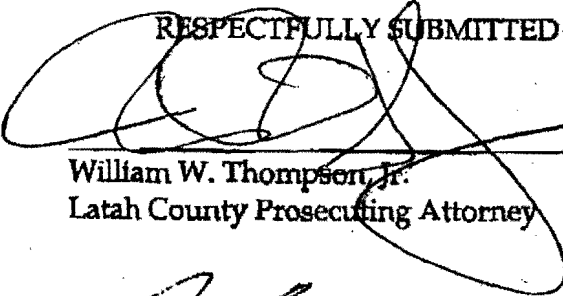
1. The defendant, JOHN JOSEPH DELLING, is currently held in Ada County

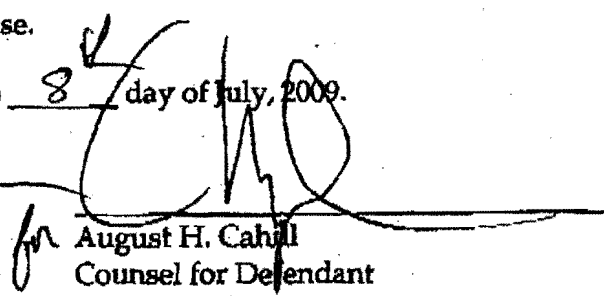
pending sentencing on a charge of Second Degree Murder in State of Idaho v. John Delling,
Ada County Case No. CR-FB-2007-0000663.


2. The defendant, John Delling, by and through his undersigned attorney, states that he wishes and is prepared to plead guilty to the amended charge of Second Degree Murder in the instant case, and consents to disposition of this case in Ada County.

3. The undersigned Prosecuting Attorneys for Latah and Ada County agree to and approve the transfer of this case to Ada County for plea and sentencing in conjunction with the above-referenced Ada County case.

RESPECTFULLY SUBMITTED this 8th day of July, 2009.


William W. Thompson, Jr.
Latah County Prosecuting Attorney


for August H. Cahill
Counsel for Defendant


for Greg H. Bower
Ada County Prosecuting Attorney

NO. _____
FILED
A.M. 11:10 P.M.

JUL 13 2009

J. DAVID NAVARRO, Clerk
By _____
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise Idaho 83702
Telephone: (208) 287-7700

RECEIVED
JUL 16 2009
ADA COUNTY CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

JOHN JOSEPH DELLING,)

Defendant.)

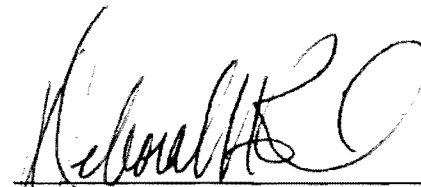
Case No. CR-FE-2007-0000663

**ORDER ACCEPTING
TRANSFER OF LATAH
COUNTY CASE NO. CR-2007-
01378**

Based upon the stipulation of the parties, the Order of Transfer from Latah County, and the Court being otherwise fully informed, this Court accepts the transfer of Latah County Case No. CR-2007-01378 pursuant to I.C.R. 20 under the conditions outlined in the State's motion to accept transfer.

IT IS SO ORDERED.

DATED this 13th day of July 2009


Deborah A. Bail
District Judge

**ORDER ACCEPTING TRANSFER OF LATAH COUNTY CASE NO. CR-2007-01378
(DELLING), Page 1**

00220

Session: Bail071409
Session Date: 2009/07/14
Judge: Bail, Deborah A.
Reporter: Gambee, Susan

Division: DC
Session Time: 09:06

Courtroom: CR508

Clerk(s): *Janine Korsen* *
Luedtka, Carol

State Attorneys:
Bourne, Roger
Reilly, Heather

Public Defender(s):
Cahill, Gus
Myshin, Amil

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: CR0700663
Plaintiff: State of Idaho
Plaintiff Attorney:
Defendant: Delling, John
Additional audio and annotations can be found in case: 0002.
Co-Defendant(s):
Pers. Attorney:
State Attorney: Bourne, Roger
Public Defender: Myshin, Amil

2009/07/14

09:37:23 - Operator
Recording:
09:37:23 - New case
Delling, John
09:37:40 - Defendant: Delling, John
defendant present, in custody.
09:37:41 - Judge: Bail, Deborah A.
inquires as to the state of the transfer.
09:37:46 - State Attorney: Bourne, Roger
advises that not all of the documents from Latah County were

00221

transferred yet.

09:38:30 - Judge: Bail, Deborah A.
inquires.

09:38:41 - State Attorney: Bourne, Roger
responds.

09:39:03 - Judge: Bail, Deborah A.
comments.

09:39:10 - State Attorney: Bourne, Roger
calls his first witness.

09:39:33 - Other: Groben, Dr. Glen
is sworn by the Clerk.

09:39:55 - State Attorney: Bourne, Roger
begins direct examination.

09:42:38 - General:
Exhibit 11, previously marked, is identified.

09:44:01 - General:
Exhibit 12, previously marked, is identified.

09:46:26 - General:
Exhibit 13, previously marked, is identified.

09:48:01 - Public Defender: Myshin, Amil
has no questions.

09:48:03 - State Attorney: Bourne, Roger
moves to admit Exhibit's 11, 12, & 13.

09:48:11 - Public Defender: Myshin, Amil
has no objection.

09:48:13 - Judge: Bail, Deborah A.
admits Exhibits 11, 12 & 13.

09:48:21 - Other: Groben, Dr. Glen
steps down and is excused.

09:48:45 - Other: Marr, Robert
is sworn by the Clerk.

09:48:49 - State Attorney: Bourne, Roger
begins direct examination.

09:52:48 - General:
Exhibit's 14 & 15, previously marked, are identified.

09:55:30 - State Attorney: Bourne, Roger
continues direct examination.

09:56:30 - General:
Exhibit's 16 & 17, previously marked, are identified.

09:57:15 - State Attorney: Bourne, Roger
moves to admit Exhibit's 14, 15, 16 & 17.

09:57:49 - Public Defender: Myshin, Amil
has no objection.

09:57:53 - Judge: Bail, Deborah A.
admits Exhibit's 14, 15, 16 & 17.

09:58:00 - State Attorney: Bourne, Roger
continues direct examination.

10:04:43 - Public Defender: Myshin, Amil

has no questions.

10:04:47 - Other: Marr, Robert
steps down.

10:04:49 - State Attorney: Bourne, Roger
comments.

10:05:31 - Other: Peterson, Dorothy
is sworn by the Clerk.

10:05:35 - State Attorney: Bourne, Roger
begins direct examination.

10:12:34 - General:
Exhibit's 18 & 19, previously marked, are identified.

10:13:33 - State Attorney: Bourne, Roger
continues direct examination.

10:14:43 - General:
Exhibit 20, previously marked, is identified.

10:15:35 - General:
Exhibit's 21, & 22, previously marked, are identified.

10:17:08 - State Attorney: Bourne, Roger
continues direct examination.

10:17:47 - General:
Exhibit 23, is identified and offered.

10:18:03 - Public Defender: Myshin, Amil
has no objection.

10:18:05 - Judge: Bail, Deborah A.
admits Exhibit 23.

10:18:08 - Judge: Bail, Deborah A.
inquires.

10:18:11 - State Attorney: Bourne, Roger
offers Exhibit's 18, 19, 21 & 22.

10:18:17 - Public Defender: Myshin, Amil
has no objection.

10:18:20 - Judge: Bail, Deborah A.
admits Exhibit's 18, 19, 21 & 22.

10:18:36 - State Attorney: Bourne, Roger
plays Exhibit 23 to the Court.

10:29:27 - State Attorney: Bourne, Roger
comments and continues direct examination.

10:31:46 - Public Defender: Myshin, Amil
begins cross examination.

10:33:36 - Judge: Bail, Deborah A.
calls a 10 minutes recess.

10:34:10 - Operator
Stop recording: (On Recess)

10:49:19 - Operator
Recording:

10:49:19 - Record
Delling, John

10:49:29 - State Attorney: Reilly, Heather

calls the next witness.

10:50:12 - Other: Frost, Steven Richard
is sworn by the Clerk.

10:50:17 - State Attorney: Reilly, Heather
begins direct examination.

10:59:09 - Public Defender: Cahill, Gus
begins cross examination.

11:01:44 - Judge: Bail, Deborah A.
comments.

11:01:46 - Other: Frost, Steven Richard
steps down and is excused.

11:01:51 - Judge: Bail, Deborah A.
comments.

11:02:21 - Other: Rice, Jim
is sworn by the Clerk.

11:02:27 - State Attorney: Bourne, Roger
begins direct examination.

11:07:22 - Public Defender: Cahill, Gus
has no questions.

11:07:25 - Judge: Bail, Deborah A.
comments.

11:07:27 - Other: Rice, Jim
steps down and is excused.

11:07:35 - State Attorney: Reilly, Heather
calls her next witness.

11:08:08 - Other: Lyter, Harvey
is sworn by the Clerk.

11:08:11 - State Attorney: Reilly, Heather
begins direct examination.

11:14:44 - General:
Exhibit 24, previously marked, is identified and offered.

11:15:53 - Public Defender: Cahill, Gus
has no objection.

11:15:57 - General:
Time stamp

11:16:00 - Judge: Bail, Deborah A.
admits Exhibit 24.

11:16:04 - State Attorney: Reilly, Heather
continues direct examination.

11:18:20 - Judge: Bail, Deborah A.
questions the witness.

11:19:02 - State Attorney: Reilly, Heather
continues direct examination.

11:20:35 - Other: Lyter, Harvey
steps down and is excused.

11:20:40 - State Attorney: Reilly, Heather
calls his next witness.

11:21:14 - Other: Goldsmith, Clarence

is sworn by the Clerk.

11:21:22 - State Attorney: Bourne, Roger
begins direct examination.

11:28:13 - General:
Exhibit 25, previously marked, is identified.

11:28:53 - State Attorney: Bourne, Roger
continues direct examination.

11:30:46 - State Attorney: Bourne, Roger
moves to admit Exhibit 25.

11:30:52 - Public Defender: Cahill, Gus
has no objection.

11:30:55 - Judge: Bail, Deborah A.
admits Exhibit 25.

11:30:57 - State Attorney: Bourne, Roger
continues direct examination.

11:31:55 - Public Defender: Myshin, Amil
has no questions.

11:32:06 - State Attorney: Bourne, Roger
comments.

11:32:08 - Other: Goldsmith, Clarence
steps down and is excused.

11:32:21 - State Attorney: Bourne, Roger
calls his next witness.

11:32:58 - Other: Cornaby, Brit
is sworn by the Clerk.

11:33:06 - State Attorney: Bourne, Roger
begins direct examination.

11:37:08 - General:
Exhibit 26, previously marked, is identified.

11:37:48 - State Attorney: Bourne, Roger
continues direct examination.

11:40:49 - State Attorney: Bourne, Roger
moves to admit Exhibit 26.

11:40:58 - Public Defender: Myshin, Amil
has no objection.

11:41:01 - Judge: Bail, Deborah A.
admits Exhibit 26.

11:41:04 - State Attorney: Bourne, Roger
comments.

11:41:07 - Other: Cornaby, Brit
steps down.

11:41:21 - Judge: Bail, Deborah A.
comments.

11:41:23 - State Attorney: Bourne, Roger
comments and calls his next witness.

11:42:05 - Other: Durrell, Craig
is sworn by the Clerk.

11:42:10 - State Attorney: Bourne, Roger

begins direct examination.
11:45:21 - General:
Exhibit 27, previously marked, is identified and offered.
11:45:33 - Public Defender: Myshin, Amil
has no objection.
11:45:36 - Judge: Bail, Deborah A.
admits Exhibit 27.
11:45:41 - State Attorney: Bourne, Roger
continues direct examination.
11:47:56 - General:
Exhibit's 28, 29, 30, 31, & 32, previously marked, are identified & offered.
11:49:05 - Public Defender: Myshin, Amil
has no objection.
11:49:08 - Judge: Bail, Deborah A.
admits Exhibit's 28, 29, 30, 31 & 32.
11:49:15 - State Attorney: Bourne, Roger
continues direct examination.
11:52:41 - Judge: Bail, Deborah A.
calls the lunch recess.
11:52:49 - Operator
Stop recording: (On Recess)

Case ID: 0002

Case Number: CR0700663
Plaintiff: State of Idaho
Plaintiff Attorney:
Defendant: Delling, John
Previous audio and annotations can be found in case: 0001.
Co-Defendant(s):
Pers. Attorney:
State Attorney: Bourne, Roger
Public Defender: Myshin, Amil

12:37:40 - Operator
Recording:
12:37:40 - Recall
Delling, John
12:38:11 - Operator
Stop recording:
13:51:40 - Operator
Recording:
13:51:40 - Record
Delling, John

00226

13:51:51 - Other: Burrell, Det Craig
Mr Bourne continues direct examination

13:53:01 - State Attorney: Bourne, Roger
Has witness handed St exhibit 33, identified, offered

13:53:44 - Public Defender: Myshin, Amil
No objection

13:53:46 - Judge: Bail, Deborah A.
Admits St exhibit 33

13:53:47 - State Attorney: Bourne, Roger
Continues direct examination

13:55:53 - State Attorney: Bourne, Roger
Has the witness handed St exhibits 34, 35, 36 & 37, identified

13:58:33 - State Attorney: Bourne, Roger
Has he witness handed St exhibits 38 & 39, identified

13:59:43 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 40, identified

14:00:43 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 44, identified

14:03:49 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 42, identified

14:04:29 - State Attorney: Bourne, Roger
Has witness handed St exhibits 43 & 44, identified

14:06:15 - State Attorney: Bourne, Roger
Offers St exhibits 34-44

14:06:17 - Public Defender: Myshin, Amil
No objection

14:06:21 - Judge: Bail, Deborah A.
Admits St exhibits 34-44

14:06:22 - State Attorney: Bourne, Roger
Continues direct examination

14:09:47 - State Attorney: Bourne, Roger
Has witness handed ST exhibit 45 & 46, identified, offered

14:10:29 - Public Defender: Myshin, Amil
No objection

14:10:47 - Judge: Bail, Deborah A.
Admits St exhibits 45 & 46

14:10:56 - State Attorney: Bourne, Roger
Continues direct examination

14:13:00 - State Attorney: Bourne, Roger
Has the witness handed St exhibits 46-53, identified

14:17:40 - State Attorney: Bourne, Roger
Offers ST exhibits 47-53

14:17:42 - Public Defender: Myshin, Amil
Admits St exhibits 47-53

14:17:43 - Judge: Bail, Deborah A.

14:17:43 - State Attorney: Bourne, Roger
Has witness handed St exhibits 54 & 55, identified

14:18:46 - State Attorney: Bourne, Roger
Offers St exhibits 54 & 55

14:19:06 - Judge: Bail, Deborah A.
Admits St exhibits 54 & 55

14:19:15 - State Attorney: Bourne, Roger
Continues direct examination

14:20:35 - State Attorney: Bourne, Roger
Has the witness handed St exhibits

14:26:20 - Public Defender: Myshin, Amil
Has cross examination

14:26:50 - State Attorney: Bourne, Roger
Has re-direct examination

14:27:44 - Public Defender: Myshin, Amil
Has re-cross examination

14:27:53 - Judge: Bail, Deborah A.
Witness is excused

14:28:54 - Other: Barker, Det Jaimie
Sworn, direct examination by Mr Bourne

14:29:48 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 56, 57 & 58, identified

14:32:16 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 59, 60, 61 identified

14:34:07 - State Attorney: Bourne, Roger
Has the witness handed St exhibits 62 & 63, identified

14:35:00 - State Attorney: Bourne, Roger
Offers St exhibits 56-63

14:35:03 - Public Defender: Myshin, Amil
No objection

14:35:04 - Judge: Bail, Deborah A.
Admits St exhibits 56-63

14:35:06 - State Attorney: Bourne, Roger
Continues direct examination

14:37:02 - State Attorney: Bourne, Roger
Has the witness handed St exhibits 64, 65, 66, & 67, identified, offered

14:39:29 - Public Defender: Myshin, Amil
No objection

14:39:32 - Judge: Bail, Deborah A.
Admits St exhibits 64-67

14:39:34 - State Attorney: Bourne, Roger
Continues direct examination

14:42:14 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 68, 69 identified, offered

14:43:17 - Public Defender: Myshin, Amil
No objection

14:43:21 - Judge: Bail, Deborah A.
Admits St exhibits 68 & 69

14:43:38 - Public Defender: Myshin, Amil
No questions

14:43:39 - Judge: Bail, Deborah A.
Witness is excused

14:44:37 - Other: Taddicken, Det Mike
Sworn, direct examination by Mr Bourne

14:46:59 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 70, identified

14:47:39 - Public Defender: Myshin, Amil
No objection

14:47:44 - Judge: Bail, Deborah A.
Admits St exhibit 70

14:47:55 - State Attorney: Bourne, Roger
Continues direct examination

14:55:38 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 71, identified, offered

14:56:17 - Public Defender: Myshin, Amil
No objection

14:56:20 - Judge: Bail, Deborah A.
Admits St exhibit 71

14:56:43 - State Attorney: Bourne, Roger
Continues direct examination

14:57:21 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 72, identified, offered

14:59:00 - Public Defender: Myshin, Amil
No objection

14:59:08 - Judge: Bail, Deborah A.
Admits St exhibit 72

14:59:15 - State Attorney: Bourne, Roger
Continues direct examination

15:03:45 - Public Defender: Myshin, Amil
Has cross examination & has witness handed a report

15:06:32 - State Attorney: Bourne, Roger
Has re-direct examination

15:07:33 - Judge: Bail, Deborah A.
Witness is excused

15:08:15 - Other: Strolberg, Det Shelley
Sworn, direct examination by Mr Bourne

15:10:01 - State Attorney: Bourne, Roger
Has the witness handed ST exhibit 73, identified, offered

15:10:29 - Judge: Bail, Deborah A.
Addresses the Court re: DVD

15:10:50 - State Attorney: Bourne, Roger
Won't publish it

15:11:08 - Public Defender: Myshin, Amil
No objection to admitting St exhibit 73

15:11:09 - Judge: Bail, Deborah A.
Admits St exhibit 73

15:11:23 - State Attorney: Bourne, Roger
Continues direct examination

15:12:07 - State Attorney: Bourne, Roger
Has the witness handed St exhibit 74, 75, 76, 77, 78, 79 identified, offered

15:17:40 - Public Defender: Myshin, Amil
No objection

15:17:47 - Judge: Bail, Deborah A.
Admits St exhibits 74-79

15:17:56 - Public Defender: Myshin, Amil
No questions

15:17:57 - Judge: Bail, Deborah A.
Witness is excused

15:18:03 - Judge: Bail, Deborah A.
Takes a break

15:18:10 - Operator
Stop recording:

15:35:27 - Operator
Recording:

15:35:27 - Record
Delling, John

15:37:22 - Other: Reilly, Heather
Offers St exhibit 20 previously missed

15:38:01 - Other: Morrison, Monica
Sworn, direct examination by Ms Reilly

15:44:34 - Other: Reilly, Heather
Has witness handed St exhibit 80, identified

15:44:48 - Public Defender: Myshin, Amil
No objection

15:45:04 - Judge: Bail, Deborah A.
Admits St exhibit 80

15:45:10 - State Attorney: Bourne, Roger
Publishes St exhibit 80

15:56:35 - Public Defender: Myshin, Amil
Has no questions

15:56:40 - Judge: Bail, Deborah A.
Witness is excused

15:56:50 - State Attorney: Bourne, Roger
Addresses the Court and on next date will have victim witness statements

15:57:24 - Judge: Bail, Deborah A.
Inquires if Mr Bourne will be filing an Information

15:57:53 - State Attorney: Bourne, Roger
Addresses the Court re: Latah county case

15:58:09 - Judge: Bail, Deborah A.
Takes the Latah county and the agreement is he waives his PH

15:58:33 - Public Defender: Myshin, Amil
That is the agreement and they will be filing motions

15:58:45 - Judge: Bail, Deborah A.
Would issue the same rulings

15:59:17 - Judge: Bail, Deborah A.
Sets this for change of plea on Latah county case for Aug 3,
@ 9:30

15:59:46 - Judge: Bail, Deborah A.
Inquires if Mr Myshin has gotten confirmation on Aug 18 & 1
9th dates

16:00:15 - Public Defender: Myshin, Amil
Has not heard if the dates are available

16:00:23 - Judge: Bail, Deborah A.
Continues the sentencing to Aug 18 & 19 @ 9:30am

16:00:37 - State Attorney: Bourne, Roger
Addresses the Court

16:00:59 - Other: Cahill, Gus
Inquires of the Court and would like to write a sentencing m
emorandum

16:01:19 - Judge: Bail, Deborah A.
Would allow and will proceed to sentencing when all the evid
ence is done

16:01:34 - Operator
Stop recording:

SENTENCING MEMO

DATE: Aug 18, 2009 DEFENDANT PRESENT (Y/N) CUSTODY/BOND

FROM: Judge Deborah Bail/ Carol Luedtka/ Susan Gambiae

CASE: STATE v John Delling No. CR0700663/CR0701625

Prosecutor: Roger Bourne Heath Kelly / Bill Thompson Defense Counsel Amil Stephens / Sus Cabell

State recommends: _____

Defense recommends: _____

Interpreter _____

COURT: () Judgment Withheld; _____ years of probation

() Judgment of Conviction

Term of years= _____ **fixed** followed by _____ **indeterminate** for a total: _____

() RETAINED JURISDICTION () COMMUTED _____

() SUSPENDED, CONDITIONS OF PROBATION:

1. Counseling as directed by P.O. with proof of attendance, and specifically:
Mental health counseling, Substance abuse counseling, Vocational Rehabilitation,
Cognitive Self-Change, 90 days AA in 90 days, Anger Management, Parenting Classes
Other: _____
2. Restitution: \$ _____ or State has _____ days to provide restitution figure; Defense has
_____ days to object. Joint and Several
3. Defendant shall be subject to random blood, breath and urinalysis.
4. Defendant is subject to search of person, property, and residence and waives 4th Amendment rights
5. Defendant shall maintain full time employment.
6. Defendant shall maintain full time employment or be involved in a full time educational program with the approval of his or her P.O.
7. Defendant shall not refuse any blood alcohol content tests.
8. Defendant may not purchase, possess or consume any alcohol.
9. Defendant shall not frequent any establishment where the sale of alcohol is the primary business.
10. Defendant shall not own, carry or have in his/her possession any firearms or other weapons.
11. Probation may be transferred to the State of _____.
12. Defendant shall take all medications prescribed by his or her attending physician and shall provide a copy of the prescription to his/her P.O.
13. Defendant shall complete his/her GED/HSE.
14. Defendant shall not associate with individuals specified by P.O.
15. Defendant shall have no contact with any minor children.

ADA COUNTY JAIL _____ DISCRETIONARY JAIL TO PO _____

Additional conditions: _____

Mr Bourne introduces Bill Thompson - Latah Co Prosecutor.
Def will begin with their witnesses.

00232

CRIMINAL CASE FILE MEMO

Sentencing

DATE: Aug 18, 2009 DEFENDANT PRESENT ☒ Y/N ☐ CUSTODY/BOND

FROM: Judge Deborah Bail/ Carol Luedtka/ Susan Gambee

RE: State v John Delling CASE NO. CR0700163/CR0701675

Counsel for the State Roger Bourne / Heather Kelly / Bill Thompson

Counsel for the Defendant Carol Myshkin / Dan Cahill

Interpreter

Plea Bargain

Mr. Myshkin calls Dr. Woods, sworn, direct exam.
Dr. Woods makes a diagram. Ct takes a short break.
Ct resumes - Dr. Woods is still on the stand.

Mr. Bourne has no question - witness is excused.

Mr. Bourne calls Dr. Eagle, sworn, direct exam.

Mr. Myshkin has cross - witness is excused.

Mr. Myshkin recalls Dr. Woods, direct exam. Mr. Bourne has cross-exam. Witness is excused. Mr. Bourne addresses the Court. Mr. Cahill asks for a short break.

Ct takes a short break. Ct resumes. Mr. Cahill calls Carol Delling, sworn, direct exam. Mr. Cahill has pictures shown on Elmo. Witness is excused.

Mr. Bourne calls Rick Boss for a victim impact statement.

That is all the victim impact statements & witnesses.

Ct breaks for lunch. Ct resumes. Mr. Bourne gives closing arguments & asks for fixed life sentence.

Motion for Bond Reduction - circle/ Not Advanced/ Withdrawn Denied Granted

Additional Remarks (include anything the defendant or either counsel was told)

Mr. Cahill gives closing arguments & asks the Ct to put in its Order - to provide w/ treatment. Mr. Bourne asks to leave restitution open. Ct takes a short break. Ct resumes. Mr. Delling makes a statement to the Ct.
Court pronounces sentence - fixed life - concurrent w/ treatment

00233

AUG 19 2009

J. DAVID NAVARRO, Clerk
By *Ana Merino* DEPUTY

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
2
3 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
4

5 THE STATE OF IDAHO,)
6)
7 Plaintiff,)
8 vs.) Case No. H0700663
9)
10 JOHN JOSEPH DELLING,) JUDGMENT AND COMMITMENT
11)
12 Defendant.)
13)

14 On the 18th day of August, 2009, before the Honorable Deborah A. Bail,
15 District Judge, personally appeared Roger Bourne, Deputy Prosecuting Attorney for
16 the County of Ada, State of Idaho, and the defendant with his attorney, Amil Myshin,
17 for the pronouncement of judgment in this case.

18 The defendant has been convicted upon a plea of guilty to the offense of
19
20 MURDER IN THE SECOND DEGREE, FELONY, I.C. §18-4001, 4002, 4003(g), of
21 the Amended Information. The Court asked the defendant if he had any legal cause to
22 show why judgment should not be pronounced against him. No objection was made
23 by either the State or the Defense to the entry of judgment.
24

25 IT IS ADJUDGED that the defendant is sentenced pursuant to Idaho Code §19-
26 2513 to the custody of the Idaho State Board of Correction to be held and incarcerated
27 by said Board in a suitable place for a period of time as follows:
28
29

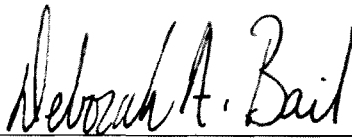
00234

1 For a fixed and determinate period of confinement of life, and shall run
2 concurrent to Case No. CRFE07001625.
3

4 IT IS FURTHER ORDERED that the defendant is committed to the custody of
5 the Sheriff of Ada County, Idaho, for delivery forthwith to the custody of the Idaho
6 State Board of Correction at the Idaho State Penitentiary or other facility within the
7 state designated by the State Board of Correction.
8

9 IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this
10 Judgment and Commitment to the said Sheriff, which shall serve as the commitment
11 of the defendant.
12

13 Done in open court this 18th day of August, 2009.
14

15 
16

17 DEBORAH A. BAIL
18 District Judge
19
20
21
22
23
24
25
26
27
28
29

CERTIFICATE OF MAILING

I hereby certify that on this 19th day of August, 2009, I mailed (served) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR
INTERDEPT MAIL

ADA COUNTY PUBLIC DEFENDER
INTERDEPT MAIL

ADA COUNTY JAIL
INTERDEPT MAIL

DEPARTMENT OF CORRECTION
CENTRAL RECORDS
1299 NORTH ORCHARD STE 110
BOISE ID 83706

PROBATION & PAROLE-PSI DEPARTMENT
INTERDEPT MAIL-PICKUP BOX

J. DAVID NAVARRO
Clerk of the District Court

By: Tara Herrier
Deputy Court Clerk

00236

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

NO. 1050 FILED
A.M. _____ P.M. _____

SEP 15 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|-----------------------|---|---------------------------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff-Respondent, |) | |
| |) | |
| vs. |) | Criminal No. CR-FE-2007-0000663 |
| |) | |
| |) | NOTICE OF APPEAL |
| JOHN JOSEPH DELLING, |) | |
| |) | |
| Defendant-Appellant. |) | |
| |) | |

TO: THE ABOVE NAMED RESPONDENT, GREG BOWER, ADA COUNTY
PROSECUTOR, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Defendant, appeals against the State of Idaho to the Idaho Supreme Court from the final Decision and Order entered against him in the above-entitled action on the 18TH day of AUGUST, 2009, the Honorable Deborah Bail, District Judge, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph one (1) above is appealable pursuant to I.A.R. 11(c)(1).
3. That the Defendant requests the entire reporter's standard transcript as defined in Rule 25(a), I.A.R.

4. The Defendant also requests the preparation of the following additional portions of the reporter's transcript:

Hearing held: AUGUST 18, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 250

Hearing held: JULY 14, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 250

Hearing held: JUNE 2, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

Hearing held: MAY 27, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

Hearing held: MAY 8, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 100

Hearing held: APRIL 23, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

Hearing held: MARCH 23, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50


Hearing held: JANUARY 30, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

Hearing held: JANUARY 27, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

5. The Defendant requests that the clerk's record contain only those documents automatically included as set out in I.A.R. 28(b)(2), including the Grand Jury Transcript if Indicted, any Jury Instructions requested and given, and Pre-Sentence Investigation Report.
6. I certify:
 - a) That a copy of this Notice of Appeal has been served on the reporter.
 - b) That the Defendant is exempt from paying the estimated transcript fee because he is an indigent person and is unable to pay said fee.
 - c) That the Defendant is exempt from paying the estimated fee for preparation of the record because he is an indigent person and is unable to pay said fee.
 - d) That the Defendant is exempt from paying the appellate filing fee because he is indigent and is unable to pay said fee.
 - e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.
7. That the Defendant anticipates raising issues including, but not limited to:
 - a) "Did the district court abuse its discretion by sentencing the defendant to a determinate life sentence?"
 - b) The Court's denial of the Defendant's Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and § 18-209 Unconstitutional and Objection to Access to Defendant by State's Experts. This issue involves claimed violation of Defendant's right under the 5th, 6th, 8th and 14th Amendments to United States Constitution and Article I Sections 2, 7 and 13 of Idaho Constitution.

- c) The Court's granting of the State's Motion for The Admission of I.C.R. 404(b) Evidence.

DATED This 14th day of September, 2009.



AUGUST H. CAHILL
Attorney for Defendant


CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on the 14TH day of SEPTEMBER, 2009, I mailed a true and correct copies of the foregoing, NOTICE OF APPEAL to:

LAWRENCE G. WASDEN, ATTORNEY GENERAL, and

S. GAMBEE, HONORABLE JUDGE DEBORAH BAIL'S COURT REPORTER

by depositing the same in the Interdepartmental Mail.



ALISA O'NEAL

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front St., Ste. 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

NO. _____
FILED _____
4 M. _____ P.M. 2:30

SEP 15 2009

J. DAVID NAVARRO, Clerk
By _____
DEPUTY

RECEIVED
SEP 15 2009

ADA COUNTY CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|-----------------------|---|--------------------------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff-Respondent, |) | Criminal No. CR-FE-2007-000663 |
| |) | |
| vs. |) | |
| |) | |
| JOHN JOSEPH DELLING, |) | ORDER APPOINTING STATE |
| |) | APPELLATE PUBLIC DEFENDER |
| Defendant-Appellant. |) | ON DIRECT APPEAL |
| |) | |

The above-named Defendant, JOHN JOSEPH DELLING, being indigent and having heretofore been represented by the Ada County Public Defender's Office in the District Court, and said Defendant having elected to pursue a direct appeal in the above-entitled matter;

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Idaho State Appellate Public Defender is appointed to represent the above named Defendant, JOHN JOSEPH DELLING, in all matters pertaining to the direct appeal.

DATED This 15th day of SEPTEMBER, 2009.

Deborah A. Bail
DEBORAH BAIL
District Judge

ORDER APPOINTING STATE APPELLATE
PUBLIC DEFENDER ON DIRECT APPEAL

00241

NOV 03 2009

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ORIGINAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

STATE OF IDAHO,
Plaintiff-Respondent,

v.

JOHN JOSEPH DELLING,
Defendant-Appellant.

CASE NO. CR 2007-663

S.C. DOCKET NO. 36920

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, GREG BOWER, ADA COUNTY PROSECUTOR, 200 WEST FRONT STREET 3RD FLOOR, BOISE, ID, 83702, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment and Commitment entered in the above-entitled action on the 19th day of August, 2009, the Honorable Deborah A. Bail, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in failing to grant the appellant's Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and § 18-209 Unconstitutional and Objection to Access to Defendant by State's Experts? This issues involves claimed violations of Defendant's right under the 5th, 6th, 8th, and 14th Amendments to the Unites States Constitution and Article I Sections 2, 7, and 13 of the Idaho Constitution.

(b) Did the district court abuse its discretion by imposing and excessive sentence?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. Reporter's Transcript. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) Hearing held on August 18, 2009 (Court Reporter: Susan Gambee, estimation of pages);

(b) Hearing held on July 14, 2009 (Court Reporter: Susan Gambee, estimation of 250 pages);

- (c) Hearing held on May 27, 2009 (Court Reporter: Susan Gambee, estimation of 50 pages);
- (d) Hearing held on May 8, 2009 (Court Reporter: Susan Gambee, estimation of 100 pages);
- (e) Hearing held on April 23, 2009 (Court Reporter: Susan Gambee, estimation of 50 pages);
- (f) Hearing held on March 23, 2009 (Court Reporter: Susan Gambee, estimation of 50 pages);
- (g) Hearing held on January 30, 2009 (Court Reporter: Susan Gambee, estimation of 50 pages); and
- (h) Hearing held on January 27, 2009 (Court Reporter: Susan Gambee, estimation of 50 pages).

6. Clerk's Record. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and § 18-209 Unconstitutional and Objection to Access to Defendant by State's Experts, filed or lodged, by the state, appellant or the court;
- (b) Notice – of Intent to Use I.R.E> 404(b) Evidence filed July 19, 1007;


- (c) Grand Jury Transcript filed July 31, 2007
- (d) Objection to Determination of Fitness of Defendant to Proceed and Request for Hearing filed October 16, 2008
- (e) Stipulation for Release of Raw Data of Counsel filed December 4, 2008;
- (f) Notice of Intent to Produce Psychological Evidence filed February 18, 2009;
- (g) Amended Notice of Intent to Produce Evidence Pursuant to I.C. § 18-207 filed March 18, 2009;
- (h) State's Supplemental Brief in Support of State's Motion for Admission of Rule 404B Evidence lodged March 20, 2009;
- (i) Objection to Access to Defendant by State's Experts and Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and 209 Unconstitutional filed March 20, 2009;
- (j) Memorandum lodged April 1, 2009;
- (k) State's Response to the Defendant's Objection to I.C. § 18-207 and the Defendant's Motion to Declare the Abolition of the Insanity Defense Constitutional filed April 6, 2009;
- (l) Brief in Support of Defend Motion to Suppress lodged April 15, 2009;
- (m) Guilty Plea Form filed May 27, 2009; and

- (n) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Susan Gambee;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Ada County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 3rd day of November, 2009.



MOLLY J. HUSKEY
State Appellate Public Defender

CERTIFICATE OF MAILING

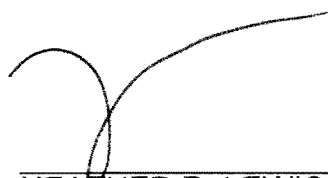
I HEREBY CERTIFY that I have this 3rd day of November, 2009, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

AUGUST H CAHILL
ADA COUNTY PUBLIC DEFENDERS OFFICE
200 W FRONT ST DEPARTMENT 17
BOISE ID 83702
STATEHOUSE MAIL

SUSAN GAMBEE
COURT REPORTER
200 W FRONTST
BOISE ID 83702 7300

GREG BOWER
ADA COUNTY PROSECUTORS OFFICE
200 WEST FRONT STREET 3RD FLOOR
BOISE ID 83702
STATEHOUSE MAIL

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720 0010
Hand delivered to Attorney General's mailbox at Supreme Court



HEATHER R. LEWIS
Administrative Assistant

MJH/TMF/SBT/hrl

NO. _____ FILED _____
A.M. _____ P.M. _____

DEC 08 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

JOHN J. DELLING,

Defendant.


Case No. CR-FE-2007-0000663

MOTION FOR RECONSIDERATION
OF SENTENCE AND FOR LEAVE

COMES NOW, JOHN J. DELLING, the defendant above-named, by and through counsel AUGUST H. CAHILL, Ada County Public Defender's Office, and moves this Honorable Court pursuant to ICR 35 for its reconsideration of sentence upon the grounds and for the reason that the defendant requests leniency.

The defendant further asks that the Court grant leave in order to further supplement the motion with supporting documentation and/or other evidence.

DATED, this 8 day of December 2009.



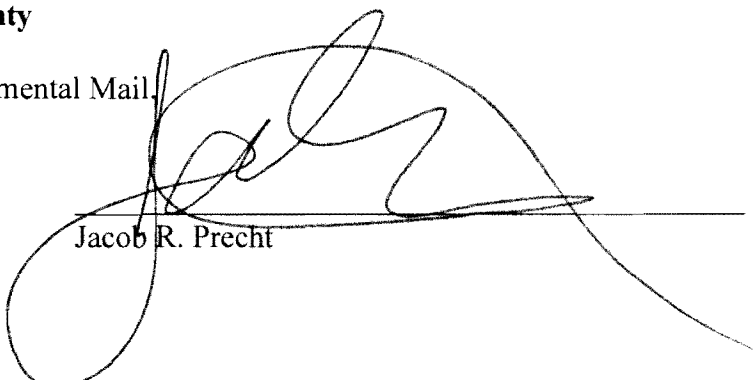
AUGUST H. CAHILL
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 8 day of December 2009, I mailed a true and correct copy of the within instrument to:

ROGER A. BOURNE
Deputy Prosecutor, Ada County

by placing said same in the Interdepartmental Mail.



Jacob R. Precht

NO. 9 FILED
A.M. 9 P.M.

DEC 11 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA


| | | |
|----------------------|---|------------------------------------|
| THE STATE OF IDAHO, |) | Case No. CR-FE-2007-0000663 |
| |) | |
| Plaintiff, |) | STATE'S OBJECTION TO |
| vs. |) | MOTION FOR |
| |) | RECONSIDERATION OF |
| JOHN JOSEPH DELLING, |) | SENTENCE |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

COMES NOW, Roger Bourne, Deputy Prosecuting Attorneys, in and for the County of Ada, State of Idaho, and makes the State's objection to the defendant's motion for reconsideration of sentence. The State recalls that there was an extensive and detailed sentencing hearing and that the Court thoroughly considered the goals and purposes of sentencing. No further consideration of that sentence should be required.

In the event that the Court is inclined to grant the motion to reconsider, the State asks for a hearing to allow the presence of the victim's family and to confront any evidence presented by the defendant.

RESPECTFULLY SUBMITTED, this 10th day of December 2009.

GREG H. BOWER
Ada County Prosecutor


Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December 2009, I caused to be served, a true and correct copy of the foregoing State's Objection to Motion for Reconsideration of Sentence upon the individual(s) named below in the manner noted:

Name and address: August Cahill, Ada County Public Defender, 200 W. Front Street, Boise, Idaho 83702

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number:

NO. _____
A.M. _____ P.M. 3

DEC 30 2009

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

JOHN JOSEPH DELLING,

Defendant.

Case No. CR-FE-2007-0000663

MOTION FOR PROGRESS REPORT

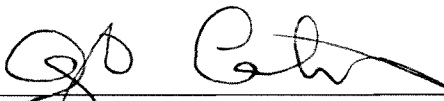
COMES NOW, JOHN JOSEPH DELLING, the defendant above-named, by and through counsel AUGUST H. CAHILL, Ada County Public Defender's Office, and moves this Court to **ORDER** the Idaho Department of Correction to inform the Court, by written report, of the defendant's progress and adjustment since being sentenced to the penitentiary.

The defendant makes this motion upon the grounds and for the reasons that such a report will assist the Court in review of the defendant's recently filed Rule 35 Motion.

The defendant requests that the Idaho Department of Correction be given sixty (60) days in which to file said progress report. The defendant further requests that the Court postpone

ruling on the defendant's motion until after the Court has had time to review the defendant's progress report.

DATED, this 30th day of December 2009.



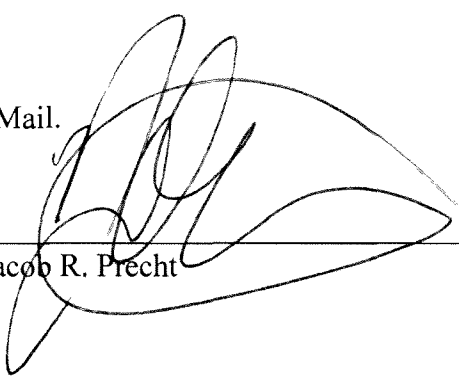
AUGUST H. CAHILL
Attorney for Defendant

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ROGER BOURNE
Ada County Prosecutor's Office

by placing said same in the Interdepartmental Mail.



Jacob R. Precht

State of Idaho vs. John Joseph Delling

| Date | Code | User | | Judge |
|-----------|------|----------|--|--------------|
| 7/17/2009 | NCRF | MASTER | New Case Filed - Felony | Deborah Bail |
| | PROS | MASTER | Prosecutor assigned Ada County Prosecutor | Deborah Bail |
| | TIOC | MASTER | Transfer In From Latah County CR-07-1378 | Deborah Bail |
| | MISC | MASTER | Acknowledgement of Oath and Examination of Oath | Deborah Bail |
| | AFFD | MASTER | Affidavit of Search Warrant | Deborah Bail |
| | AFFD | MASTER | Affidavit of Tyson Berrett Initial Determination of PC | Deborah Bail |
| | CRCO | MASTER | Criminal Complaint | Deborah Bail |
| | MISC | MASTER | Out of County/State Warrant Service Information Sheet | Deborah Bail |
| | MINE | MASTER | Minute Entry for 4/11/07 | Deborah Bail |
| | MISC | MASTER | Search Warrant | Deborah Bail |
| | MISC | MASTER | Return of Search Warrant | Deborah Bail |
| | ORDR | MASTER | Order | Deborah Bail |
| | MINE | MASTER | Minute Entry for 4/12/07 | Deborah Bail |
| | MISC | MASTER | Supplemental Return of Search Warrant | Deborah Bail |
| | ORDR | MASTER | Order/Supplemental | Deborah Bail |
| | NOFG | MASTER | Notice Of Filing Amended Criminal Complaint | Deborah Bail |
| | AMCO | MASTER | Amended Complaint Filed | Deborah Bail |
| | STIP | MASTER | Stipulation to Transfer | Deborah Bail |
| | WARR | MASTER | Warrant Recall Notice | Deborah Bail |
| | WART | MASTER | Warrant Returned | Deborah Bail |
| | STIP | MASTER | Stipulation to Transfer | Deborah Bail |
| | ORDR | MASTER | Order to Transfer | Deborah Bail |
| 7/24/2009 | NOTC | TCKELLHL | Notice of Intent to Produce Evidence Pursuant to I.C. 18-207 | Deborah Bail |
| | MISC | TCKELLHL | Objection to Access to Defendant by State's Experts and Motion to Declare I.C. 18-207 and Repeal of I.C. 18-208 and 18-209 Unconstitutional | Deborah Bail |
| | MISC | TCKELLHL | Memorandum | Deborah Bail |
| 7/30/2009 | HRSC | CCLUEDTC | Hearing Scheduled (Arraignment 08/03/2009 09:30 AM) | Deborah Bail |
| 7/31/2009 | ORDR | CCLUEDTC | Order Allowing Cameras in the Courtroom | Deborah Bail |
| 8/3/2009 | INFO | CCLUEDTC | Information Filed | Deborah Bail |
| | STIP | CCLUEDTC | Stipulation For Plea Agreement | Deborah Bail |
| | DCAR | CCLUEDTC | Hearing result for Arraignment held on 08/03/2009 09:30 AM: District Court Arraignment- Court Reporter: Susan Gambee Number of Pages:50 | Deborah Bail |

ROA Report

Case: CR-FE-2007-0001625 Current Judge: Deborah Bail

Defendant: Delling, John Joseph

State of Idaho vs. John Joseph Delling

| Date | Code | User | Judge |
|------------|--------|----------|---|
| 8/3/2009 | GPA | CCLUEDTC | Guilty Plea Advisory |
| | HRSC | CCLUEDTC | Hearing Scheduled (Sentencing 08/18/2009 09:30 AM) |
| | PLEA | CCLUEDTC | A Plea is entered for charge: - GT (I18-4001-II Murder II) |
| 8/6/2009 | PROS | PRSMITTJ | Prosecutor assigned ROGER BOURNE |
| 8/18/2009 | DCHH | CCLUEDTC | Hearing result for Sentencing held on 08/18/2009 09:30 AM: District Court Hearing Held Court Reporter: Susan Gambee Number of Transcript Pages for this hearing estimated:250 |
| | FIGT | CCLUEDTC | Finding of Guilty (I18-4001-II Murder II) |
| | JAIL | CCLUEDTC | Sentenced to Jail or Detention (I18-4001-II Murder II) Confinement terms: Penitentiary determinate: 999 years w/Treatment |
| | COPT | CCLUEDTC | Confinement Option Recorded: Life sentence. |
| | STAT | CCLUEDTC | STATUS CHANGED: closed pending clerk action |
| 8/19/2009 | JCOC | DCTHERTL | Judgment Of Conviction & Order Of Commitment |
| 8/21/2009 | STAT | CCTOMPMA | STATUS CHANGED (batch process) |
| 9/15/2009 | APSC | TCBULCEM | Appealed To The Supreme Court |
| | ORDR | CCLUEDTC | Order Appt State Appellate PD |
| 11/3/2009 | NOTA | CCTHIEBJ | Amended Notice of Appeal |
| 12/8/2009 | RULE35 | TCBULCEM | Motion for Reconsideration of Sentence and for Leave |
| 12/30/2009 | MOTN | TCBULCEM | Motion for progress report |

CASE NO.

CR07-1378

2007 APR -3 AM 9:38

CLERK OF DISTRICT COURT

NO.

A.M.

FILED

12:07

JUL 17 2009

J. DAVID NAVARRO, Clerk
By S. McCormack
2009

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 882-8580 Ext. 3316
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the)
Application for a Search)
Warrant for SPRINT.)

Case No. CR07-1378

AFFIDAVIT FOR SEARCH WARRANT

STATE OF IDAHO)
.ss)
County of Latah)

Tyson Berrett, being first duly sworn on oath, deposes and
says;

That affiant is the applicant for Search Warrant herein;

That affiant is a duly appointed, qualified and acting peace
officer within the County of Latah, State of Idaho; that affiant
is employed by the Moscow Police Department in the official
capacity or position of patrol officer; that affiant has been a
trained and qualified peace officer for approximately nine and one
half years;

That there is reasonable cause to believe that the property
referred to and sought in or upon said premises and persons

consists of:

*for number 916-792-3679, for the dates of March 10, 2007, through current:

- Call Detail Records;
- Subscriber Information (including names and addresses, driver's license numbers, Social Security numbers, application information and billing and payment information);
- Cell Site Information;
- Terminal Number Search;
- Text Messaging;
- Voice Mail.

*for number 916-792-3679, precision location/GPS tracking for the next thirty (30) days

is located in or upon the following described premises, to wit:

Sprint PCS Subpoena Compliance Center, facsimile number: 913-315-0736

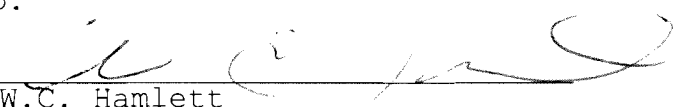
and upon certain persons, to-wit: N/A;

In support of the assertion as to the existence of reasonable cause, the following facts are offered, based upon personal knowledge of Affiant: See attached Statement of Tyson Berrett, which is marked "Exhibit A" and incorporated as though fully set forth herein.

WHEREFORE, Affiant asserts there is probable cause for the issuance of the search warrant requested herein, and requests that a search warrant issue directing a search for and seizure of the property described herein.


Affiant/Peace Officer

SUBSCRIBED and SWORN to before me this 3RD day of April, 2007, at Moscow, Latah County, Idaho.


W.C. Hamlett
MAGISTRATE JUDGE

STATEMENT OF TYSON BERRETT

On 03/31/07 at about 0147 hours, Moscow Dispatch received a 911 emergency call from Patrick Sullivan at 1218 S. Main St. #102 in the City of Moscow, Latah County, Idaho. Sullivan said his roommate, David Boss, was bleeding and not breathing.

Moscow Police Officers responded to the scene and found David Boss lying in a pool of blood on the kitchen floor. An officer checked Boss for vital signs but found none. The Latah County Coroner, Kathy Mabbutt, was called to the scene and pronounced Boss dead.

Lt. Kwiatkowski examined Boss's body for injuries and found a small hole on the back of his head at the base of the skull. Boss's body was transported to Gritman Medical Center where x-rays were taken of his skull. Lt. Kwiatkowski said Boss was cool to the touch and it appeared he had been dead for a short time.

Boss's roommate, Patrick Sullivan was interviewed by police. Sullivan said he left the house on 03/30/07 at about 2040 hours. He said Boss was cooking dinner for himself at the time he left the apartment. Sullivan said he went to Pullman, WA with his friends, Katie Lessard, Heather Sealy and Sarah Mable. Sullivan said they spent the evening in Pullman at Denny's Restaurant, Zeppoz's and two night clubs. Sullivan said he was dropped off in front of his residence at around 0147 hours that morning. Sullivan said when he arrived the door was closed but unlocked which is not unusual. He said when he entered the apartment he saw Boss lying in a pool of blood on the kitchen floor. Sullivan said he checked Boss for a pulse and called 911.

Lessard, Sealy and Mable were all interviewed by police and confirmed Sullivan's whereabouts that night.

The neighbors who live above Boss, Stas Glukhov and Paulo Miranda, were interviewed by police. Miranda said he heard a loud thump at around 0000 – 0030 hours that came from Boss's apartment. When asked to elaborate, Miranda said there were two loud thumps in succession. Glukhov said he heard a single, loud thump in Boss's apartment at around 1230 hours. Glukhov and Miranda both said they didn't hear any yelling, arguing or fighting in Boss's apartment. Other neighbors were interviewed but did not report hearing or seeing anything out of the ordinary.

On 03/31/07, Lt. Kwiatkowski telephoned Boss's father, Richard Boss, at his home in Boise, ID. During their conversation, Lt. Kwiatkowski asked Richard if he knew who might want to kill his son. Richard could think of only one person who might want to hurt his son and that was John Delling. He said Delling and his son grew up together in Boise, ID and had limited contact with each other while they both attended the University of Idaho. Richard described Delling as having a violent disposition. Richard later told Lt. Kwiatkowski that Delling visited his son at the Boss home in Boise during Christmas break of 2006. He said after Delling left the residence, his son was concerned for

Delling's mental state. He said Delling was acting irrational and was delusional. Richard said he did not know if his son spoke to Delling again after the visit in December.

John Delling's brother, Eric Delling, currently lives in Moscow, ID. Det. Arp interviewed Eric at his residence on the evening of 03/31/07. During the interview, Det. Arp asked Eric to account for his whereabouts on 03/30/07. Eric said he left the residence during the day to provide bids for customers of his lawn care business. Eric said it was dark outside when he arrived home, possibly around 1930 hours. Eric said he stayed at home, watched television and talked to his mother on the phone. Eric said he didn't leave the residence and didn't have any visitors.

Det. Arp asked Eric when he last saw or talked to his brother, John. Eric stressed he doesn't recall dates and times well but thought the last time he saw or talked to John was two - three weeks prior at their parents home in Antelope, CA. Eric said during the visit, John asked him, "do you think David is the one stealing my powers?" Eric said that wasn't the first time John commented on someone stealing his power or aura. Eric said even though John had made similar comments in the past, he believed John had really lost it. He said John was so upset, he went out of control and damaged the bathroom in his parent's residence. Local law enforcement was called to the scene and they told John he had to leave.

Eric made a comment about John having firearms and said the family took the firearms and sold them. Eric was not clear on the time frame in which that occurred and did not know anything about the firearms. Eric stressed he didn't know much about firearms at all.

Det. Arp asked Eric if he knew David Boss. Eric said he knew Boss, indicating they all grew up together in the same neighborhood in Boise, ID. Eric said he last saw David approximately two weeks ago at Winco Foods in Moscow, ID. Det. Arp if he knew where Boss lived. Eric gave a vague description of the apartment complex Boss lived in but didn't know the exact location. Det. Arp asked if John had visited Moscow recently and Eric said he did not know. Det. Arp asked who John would stay with in the event he came to Moscow. Eric said the only person he could think of was Boss. Eric paused for a moment and said John wouldn't stay with Boss and recalled the recent episode in California.

Det. Arp continued to question Eric about John and Boss's relationship. Eric answered a few of the questions and then asked Det. Arp if Boss was okay. Det. Arp ignored the question at which time Eric asked, "I want to know if David is all right." Det. Arp that Boss was not all right to which Eric responded, "that god damned John killed David, didn't he?" Det. Arp said the police were uncertain as to who killed Boss but confirmed at that time he was dead.

On 04/01/07, an autopsy was performed on Boss's body at Kimball's Funeral Home located in Pullman, WA. The medical examiner found two gunshot wounds to Boss's skull, one to the left temple and one to the rear of his head at the base of the skull.

According to the medical examiner, Boss was shot in the temple first and then in the back of the head. The gun was fired within 6-8 inches of Boss's temple and within 1 inch of the back of his head. Two bullets were recovered and were sent to the Idaho State Lab in Coeur d'Alene, ID for testing. According to a preliminary report, the bullets were .38 caliber handgun rounds and were fired from the same gun.

On 04/02/07 at about 1245 hours, I signed David Boss's mobile phone out of property in order to view the contents. The phone is an LG/Verizon mobile phone with number 208-631-8544.

I opened the phone and turned it on. The screen on the phone read, Apr/02 [Mon] and displayed a clock that read, 1330 hours. The clock on the phone was accurate.

I checked the incoming call log on the phone. The last incoming call logged on the phone was from 916-792-3679 on 03/31/07 at 12:12 am. The call lasted for fifteen minutes and forty-nine seconds. The call log did not associate a name with the number.

I entered the telephone number into Entersect, an online police information search engine. According to Entersect, 916-792-3679 is registered to John Delling, Roseville, CA. The phone service is provided by Sprint Spectrum L.P. PCS.

I called Sprint PCS and spoke with Patrice, a phone analyst in Subpoena Compliance. Patrice told me Sprint could provide the following information about John Delling's Sprint PCS account; call detail records, subscriber information, cell site information, terminal number search, text messaging, voice mail, and live GPS tracking. Patrice told me I would need to serve a search warrant upon Sprint PCS Subpoena Compliance in order to get the records.

The information gathered from Sprint PCS is important to determine John Delling's activities, whereabouts and involvement in the death of David Boss. John Delling's whereabouts are currently unknown.

A handwritten signature in black ink, appearing to read "J. Z. Bortell", is written over a horizontal line.

NO. _____
AM. _____ 12:10

JUL 17 2009

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LATAH

2007 APR -3 PM 4:33

THE STATE OF IDAHO,)
)
Plaintiff)
)
vs)
)
JOHN JOSEPH DELLING)
DOB [REDACTED])
Defendant)

CASE NO: _____
BY _____ LATAH COUNTY DEPUTY
UNIFORM CITATION NO: _____
AFFIDAVIT OF: Tyson Berrett
INITIAL DETERMINATION OF
PROBABLE CAUSE

The undersigned Judge having examined the affidavit submitted by Peace Officer Tyson Berrett along with the attached documents, and the complaint against the above indicated defendant for the crime of:

First Degree Murder; I.C. 18-4001 / 18-4003(a)

having been laid before the undersigned Judge, it is hereby determined by the undersigned judge that there is probable cause to believe that the said offense has been committed, and that the defendant has committed it.

DATED this 3RD day of Apr: 1, 2007 @ 16:28

[Signature]
Judge

00261

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LATAH

| | | |
|---------------------|---|------------------------------------|
| THE STATE OF IDAHO, |) | |
| |) | |
| Plaintiff |) | CASE NO: _____ |
| |) | |
| vs |) | UNIFORM CITATION NO: _____ |
| |) | |
| JOHN JOSEPH DELLING |) | AFFIDAVIT OF: <u>Tyson Berrett</u> |
| DOB [REDACTED] |) | INITIAL DETERMINATION OF |
| Defendant |) | PROBABLE CAUSE |

Your affiant, the undersigned police officer, being first duly sworn, deposes and says under oath as follows:

1. Your affiant is a duly qualified peace officer serving with the Moscow Police Department.
2. The above indicated defendant has been investigated for the crime of:

First Degree Murder; I.C. 18-4001 / 18-4003(a)

and your affiant asks that a Judge, after your affiant lays a complaint before him, determine whether there is probable cause to believe that said offense has been committed and that the defendant has committed it.

The facts upon which affiant relied in believing there is probable cause for said arrest are:

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I checked the incoming call log on the phone. The last incoming call logged on the phone was from 916-792-3679 on 03/31/07 at 12:12 am. The call lasted for fifteen minutes and forty-nine seconds. The call log did not associate a name with the number.

I entered the telephone number into Entersect, an online police information search engine. According to Entersect, 916-792-3679 is registered to John Delling, Roseville, CA. The phone service is provided by Sprint Spectrum L.P. PCS.

I called Sprint PCS and spoke with Patrice, a phone analyst in Subpoena Compliance. Patrice told me Sprint could provide the following information about John Delling's Sprint PCS account; call detail records, subscriber information, cell site information, terminal number search, text messaging, voice mail, and live GPS tracking. Patrice told me I would need to serve a search warrant upon Sprint PCS Subpoena Compliance in order to get the records.

On the morning of 04/03/07, I applied for and received a search warrant for information pertaining to John Dellings Sprint PCS phone number, 916-792-3679. I faxed the search warrant to Sprint PCS Subpoena Compliance.

On 04/03/07 at about 1345 hours, I talked to Melissa Bryson with Sprint Electronic Surveillance. I asked Bryson to check her records for the search warrant I served electronically earlier that day for 916-792-3679. Bryson told me she had a copy of the warrant.

I asked Bryson to do a live GPS track on the number. Bryson tracked the phone and on 04/03/07 at about 1353 hours (PST) the phone was at latitude 39.5415528 / longitude -119.7314917. She told me those GPS coordinates identified the area near East Prater Way and Howard St in Sparks, NV. Bryson told me the accuracy of the track was within 134 meters. Bryson told me I could enter the coordinates at "Google Maps" to see the satellite map.

On 04/03/07 at about 1400 hours, I talked to Melissa Bryson again. I asked Bryson if she could give me the cell tower information for the phone number, 916-792-3679 when it placed a call to 208-631-8544 on 03/31/07 at 12:12 am. Bryson told me the call hit the southeast corner of the cell tower located at 1000 Nez Perce St, Moscow, ID. This address is located in the south part of Moscow as is Boss's apartment.

I asked Bryson to perform another live GPS track on the 916-792-3679. On 04/03/07 at about 1408 hours (PST) the phone was at latitude 39.5418417 /

longitude -119.7264278. She said the track was accurate to within 98 meters. I entered the coordinates into "Google Maps" which identified the area as East Prater Way near East Greenbrae Dr in Sparks, NV.

On 04/03/07 at about 1425 hours, I talked to Katie Cooper with Sprint Electronic Surveillance. I asked Cooper to run a live GPS track on 916-792-3679. Cooper ran the track and at about 1427 hours (PST) the phone was at latitude 39.5501694 / longitude -119.7017944. I entered the coordinates into "Google Maps" which identified the area as Meritage Dr near Veneto Dr in Sparks, NV. I asked Cooper to run another live GPS track. Cooper said at about 1433 hours (PST) the phone was at latitude 39.5482917 / longitude -119.698875. I entered the coordinates into "Google Maps" which identified the area as Corleone Dr in Sparks, NV.

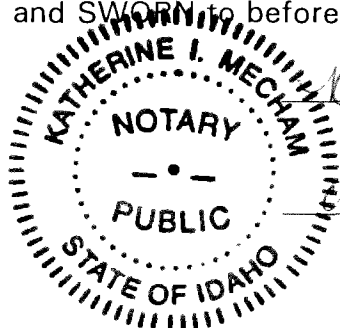
On 04/03/07 Lt. Kwiatkowski told me he received a phone call from Det. Shelly Strolberg with Boise Police Department. Strolberg said at around 0730 this morning they found a twenty-five year old male, named Bradley W. Morse, dead from two gunshot wounds to the head. Boise Police were unable to locate Morse's car in Boise, ID and believed it might have been stolen by the person(s) who shot Morse. Morse's vehicle was described as gray, Mazda MZ3 with Idaho license number 1ARB835.

I checked "Google Maps" and Sparks, NV is located 690 miles south of Moscow, ID. Antelope, CA, where John Delling's parents live, is 813 miles south of Moscow, ID. According to "Google Maps", Sparks, NV is on the route to Antelope, CA from Moscow, ID going through Boise, ID.

Det. Wolverton contacted the Sparks, NV Police Department in reference to this case. Det. Wolverton gave Sparks Police John Delling's name and the stolen vehicle information we received from Boise Police. Based on the live GPS tracking information provided by Sprint, Sparks Police found John Delling driving Morse's car and he is currently in their custody.


Affiant / Police Officer

SUBSCRIBED and SWORN to before me this ^{3rd} ~~2nd~~ day of April, 2007




Notary Public Clerk of the Court

2-28-08

My commission expires

03/31/07
11:10

WHITCOM
State Link Messages:

Page: 386
1

Unread Msg(s) 0

Arrival: 11:09:11 03/31/07 Msg subj: ??

Message Text:
(See below)

= = = = =

Message Text:
Message Received From CCH

FR.IDSIR0000.ID029013N.*MRI6574750.
PUR/C.ATN/LT P KWAITKOWSKI 07-M02841
SID/ID10004452

- IDAHO CRIMINAL HISTORY -

| NAME | SOC | STATE ID | FBI NO |
|------------------------------------|-----|----------|-----------|
| DELLING, JOHN JOSEPH | | | 422970JC1 |
| RACE SEX DOB HEIGHT EYES HAIR SKIN | | | |
| W M 601 | | BLU BRO | |
| COB POB III MULTI-ST | | N | |
| CA Y | | | |

EXTENDED INFORMATION

IXDT TYPE NUMBER
OCCUPATION 6/4/05 SHOPKO-6/30/05

ARRESTS AND DISPOSITIONS

ARREST DATE: 06-30-2005 ORI: ID0010100 AGENCY: BOISE PD
CASE: 654651
CHARGE: (F) DOMESTIC BATTERY / ASSAULT COUNTS: 1

ARREST DATE: 06-04-2005 ORI: ID0010100 AGENCY: BOISE PD
CASE: 654651
CHARGE: (M) STALKING COUNTS: 1

THIS RECORD MAY BE USED ONLY FOR CRIMINAL JUSTICE PURPOSES AS DEFINED BY THE
ILETS BOARD AND NCIC ADVISORY POLICY BOARD.

EOR - END OF IDAHO CRIMINAL HISTORY - END OF RECORD

MRI 6574751 IN: CCH 442 AT 12:10 31MAR07
OUT: 9WTC 189 AT 12:10 31MAR07

00267

DATE: 04-03-2007 08:59:01 PM Type: Recv

SUBJECT: \$L From NCIC
Message:

MKE/\$L ID/UNKNOWN DAT/20070403220118 SRC/NCIC

TXT: \$.L.

ID0290000

LOCATE NOTIFICATION AT 2359 EDT 20070403

1N01NV00081C39DD.LW.NV0160257.NIC/W102161668.0CA/CR0701378.20070403.07-4788.

EXTR.....

LOCATING ORI IS SPARKS PD

MKE/LOCATED WANTED PERSON

LIMITED EXTRADITION SEE MIS FIELD

ORI/ID0290000 NAM/DELLING,JOHN JOSEPH SEX/M RAC/W POB/CA DOB/

HGT/601 WGT/165 EYE/BLU HAI/BR0 FBI/422970JC1

FPC/RSWURSRSRSLSRSLSLSL MNU/PI-ZD293246D SOC/

OLS/CA OLY/2009

OFF/HOMICIDE - WILLFUL KILL-NONFAMILY-GUN

DOW/20070403 OCA/CR0701378

CTI/ID029015J

MIS/CAUT/ARMED AND MENTALLY UNSTABLE

FIRST DEGREE MURDER

EXTRADITION/ID WA OR

MIS/ MT WY UT NV ND SD BOND / NONE

DNA/N

NIC/W102161668 DTE/20070403 2005 EDT

LOCATED/20070403 NV0160257 07-4788 EXTR

MRI 6833035 IN: NCIC 14188 AT 22:01 03APR07

OUT: SLT7 109 AT 22:01 03APR07

=====

DATE: 04-03-2007 08:52:51 PM Type: Recv

SUBJECT: YQ From NLET
Message:

MKE/YQ ID/UNKNOWN DAT/20070403215508 SRC/NLETNV081C378A

TXT: YQ.NV0160257

20:52 04/03/2007 83496

20:52 04/03/2007 58363 ID0290000

*NV081C378A

TXT

****HIT CONFIRMATION REQUEST - FIRST NOTICE****

****RESPONSE PRIORITY :URGENT!-RESPOND WITHIN 10 MINUTES****

OCA/CR0701378.NIC/W102161668.

*** WANTED PERSON ***

NAM/DELLING, JOHN JOSEPH.DOB/[REDACTED].SEX/M.

NAME OF REQUESTER: SGT TRIPLETT

AGENCY NAME: SPARKS POLICE DEPT

PHONE: (775)353-2231

FAX: (775)353-2491

REMARKS: WE HAVE THIS SUBJ DETAINED AND HE IS CURRENTLY BEING INTERVIEWED BY
IDAHO DETECTIVES, HE HAS NOT YET BEEN BOOKED INTO OUR JAIL

.{G}

MRI 6832635 IN: NLI1 16132 AT 21:55 03APR07

OUT: SLT7 108 AT 21:55 03APR07

=====

FILED
A.M. P.M. 1:11

JUL 17 2009

J. DAVID NAVARRO, Clerk
CASE NO. CR-07-1378 B. J. Cormack
DEPUTY

2007 APR -3 PM 4:33

CLERK OF DISTRICT COURT
LATAH COUNTY
BY ell DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 882-8580 Ext. 3316
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

| | | |
|----------------------|---|-------------------------------|
| STATE OF IDAHO, |) | |
| Plaintiff, |) | |
| |) | Case No. CR-2007- <u>1378</u> |
| V. |) | |
| |) | CRIMINAL COMPLAINT |
| JOHN JOSEPH DELLING, |) | |
| Defendant. |) | |
| _____ |) | |

The undersigned, based upon the Affidavit of Tyson Berrett, complains and says; that JOHN JOSEPH DELLING, in Latah County, State of Idaho, on or about the 31st day of March, 2007, did then and there commit a crime against the People of the State of Idaho, to-wit: MURDER IN THE FIRST DEGREE, Idaho Code 18-4001, 4003, a Felony, committed as follows:

That the Defendant, JOHN JOSEPH DELLING, on or about the 31st day of March, 2007, in Moscow City, County of Latah, did wilfully, unlawfully, deliberately, with premeditation and with malice aforethought, kill and murder David Boss, a human being, by shooting him in the head, from which he died.

All of which is contrary to the form, force and effect of the statutes above cited, and against the peace and dignity of

ORIGINAL

00270

the People of the State of Idaho, WHEREFORE complainant REQUESTS
a Warrant of Arrest be issued for the person of:

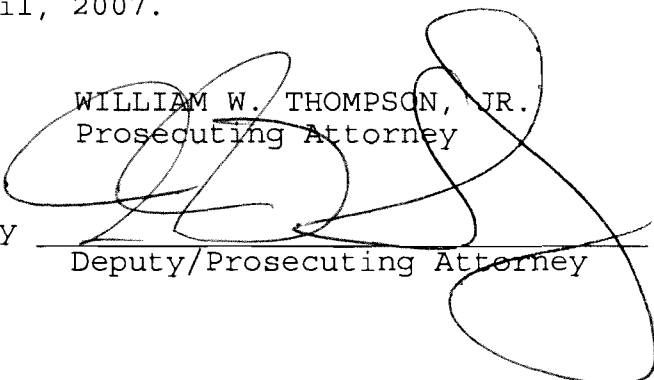
JOHN JOSEPH DELLING
DOB: [REDACTED]
SSN: [REDACTED]

[REDACTED] Defendant may be dealt with according to law.

DATED this 3 day of April, 2007.

WILLIAM W. THOMPSON, JR.
Prosecuting Attorney

by


Deputy/Prosecuting Attorney

DAVID MAHARIC, Clerk
 AND ATTORNEY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

=====

Title of Action State vs John Delling Judge WCH Hamlett
 Type of Hearing Return of Search Warrant Clerk MC
 Attorney for Plf. Wm. T. Thompson Jr. Tape No. JCI / 2007-4-11
 Attorney for Def. Def not present as repr. by Counsel Case No. CR07-1378
 Others Present _____ Date 4-11-07
 _____ Time 10:42 AM

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

1042 Tyeen Bennett was called, sworn, and testified on behalf of the State.

1044 Court questioned the witness.

1047 Court articulated findings into the record & placed the search warrant on return.

Court signed the custody order.
 Court questioned Mr. Thompson.
 Court noted he crossed out the last paragraph of the order.

1049 Court recessed at 10:49 AM.

JUL 17 2009

CASE NO. CR07-1378
J. DAVID NAVARRE
By S. McCormack
DEPUTY

2007 APR 11 AM 10:53

CLERK OF DISTRICT COURT
LATAH COUNTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the)
Application for a Search)
Warrant for SPRINT.)
)
)
)

Case No. CR07-1378
SEARCH WARRANT

TO: ANY PEACE OFFICER AUTHORIZED TO ENFORCE OR ASSIST IN
ENFORCING ANY LAW OF THE STATE OF IDAHO.

Tyson Berrett having given me proof, upon oath, this day showing
probable cause establishing grounds for issuing a search warrant
and probable cause to believe property consisting of:

*for number 916-792-3679, for the dates of March 10, 2007,
through current:

- Call Detail Records;
- Subscriber Information (including names and addresses,
driver's license numbers, Social Security numbers,
application information and billing and payment
information);
- Cell Site Information;
- Terminal Number Search;
- Text Messaging;
- Voice Mail.

*for number 916-792-3679, precision location/GPS tracking for the
next thirty (30) days

is located in or upon the following described premises, to wit:


Sprint PCS Subpoena Compliance Center, facsimile number: 913-315-
0736

and upon certain persons, to-wit: N/A;

YOU ARE THEREFORE COMMANDED TO SEARCH the above-described premises and persons for the property described above, TO SEIZE it if found and to bring it promptly before the Court above named. THIS WARRANT SHALL BE EXECUTED WITHIN 10 DAYS OF ISSUANCE, AND IS AUTHORIZED FOR DAYTIME ~~AND NIGHTTIME~~ SERVICE, AND UNDER THE FOLLOWING SPECIAL DIRECTIONS:

BUSINESS HOUR SERVICE 8⁰⁰AM - 5⁰⁰PM

GIVEN UNDER MY HAND and DATED this 3rd day of April, 2007, at 09:32.



W.C. Hamlett
MAGISTRATE JUDGE

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 882-8580 Ext. 3316
ISB No. 2613

CASE NO. CR07-137
2007 APR 11 AM 10:53

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY
NO. 117
FILED 117

JUL 17 2009
J. DAVID FAYARRE
By S [Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the)
Application for a Search)
Warrant for SPRINT.)
_____)

Case No. CR07-1378
RETURN OF SEARCH WARRANT

STATE OF IDAHO)
:ss.
County of Latah)

I, Tyson Berrett, the officer by whom this Warrant was
executed, do swear the appended inventory contains a true and
detailed account of all property taken by me or other officers
pursuant to this Warrant, and that this Warrant and property have
been duly returned before the undersigned Judge at 1045
o'clock a.m., this 11th day of April, 2007.

[Signature]
Officer

SUBSCRIBED and SWORN to before me this 11th day of April,
2007.
[Signature]
W.C. Hamlett
MAGISTRATE

ORIGINAL
00275

RETURN OF SEARCH WARRANT

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LATAH

IN THE MATTER OF)
THE APPLICATION)
FOR A SEARCH WARRANT FOR)
_____))
_____))

Case No. _____

RECEIPT AND
INVENTORY OF WARRANT

On the 3rd day of April, 2007, at approximately 0941 o'clock
A.M., the following peace officers: TYSON BARRON

served the Search Warrant heretofore issued upon the place and/or person(s) described therein as
directed in said Search Warrant. Entrance was obtained by: FAXED THE WARRANT

The person(s) found in said place were: NONE

The property found and taken and the location within or upon said place and/or person(s) are
as follows:

DESCRIPTION OF PROPERTY

LOCATION/PERSON

CALL DETAIL Records for 916-792-3679 VIA EMAIL

SUBSCRIBER INFORMATION FOR 916-792-3679 VIA EMAIL

RECEIPT AND INVENTORY

PAGE 1 OF 3 PAGES

00276

DESCRIPTION OF PROPERTY

CELL SITE INFORMATION FOR 916-792-3679

TEXT MESSAGING FOR 916-792-3679

LOCATION/PERSON

VIA EMAIL

VIA EMAIL

Handwritten entries in the Description of Property column, including "CELL SITE INFORMATION FOR 916-792-3679" and "TEXT MESSAGING FOR 916-792-3679". The rest of the column is crossed out with a diagonal line.

Handwritten entries in the Location/Person column, including "VIA EMAIL" and "VIA EMAIL". The rest of the column is crossed out with a diagonal line.

RECEIPT AND INVENTORY

PAGE 2 OF 3 PAGES

00277

This Receipt and Inventory was made in the presence of: KATE MELHAM

A copy hereof was given to the following named person(s) on the _____ day of _____, 20____:

A copy hereof was left on this date in a conspicuous place in the place searched, there being no person(s) present during said search: FAXED TO SPRINT Subpoena Compliance

DATED this 10th day of April, 2007.

Kate Melham
WITNESS

[Signature]
PEACE OFFICER

The undersigned person(s) hereby acknowledge receiving a copy hereof on this ____ day of _____, 20____:

CASE NO. CR07-1378

2007 APR 11 AM 10:53

CLERK OF DISTRICT COURT
LATAH COUNTY
BY mc DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 882-8580 Ext. 3316
ISB No. 2613

JUL 17 2009

J. DAVID [unclear]
B. [unclear]
[unclear]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the)
Application for a Search)
Warrant for SPRINT.)
)
)
)

Case No. CR07-1378

ORDER

In the above-entitled matter, this Court having heretofore issued a Search Warrant, and the said Search Warrant having been served according to law, and the Return of Warrant having been duly made as directed in said Search Warrant to this Court, and a written inventory of the property found and seized having been duly made and taken before the undersigned Magistrate or Judge and filed herein;

NOW, THEREFORE IT IS HEREBY ORDERED that the said Peace Officer shall deliver or cause to be delivered, the property described in said inventory to the Moscow Police Department for

ORDER: Page -1-


ORIGINAL

00279

the purpose of preserving said property for use as evidence or until further order of this Court. Once any related criminal case has been concluded, including the expiration of time for appeal, the property can be released or disposed of upon authorization of the prosecuting attorney.

~~IT IS FURTHER ORDERED that said property or any part thereof, may be delivered to any person or laboratory or laboratories for the purpose of conducting or obtaining any tests, analysis, or identification of said property which is deemed necessary by said Peace Officer or the Prosecuting Attorney of Latah County or his deputies, without further order of this Court.~~

DATED this 11th day of April, 2007.



MAGISTRATE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

State vs
Title of Action John Delling Judge WC Harbitt
Type of Hearing Supplemental Return of Search Warrant Clerk MC
Attorney for Plf. Michelle Evans Tape No. 501/507-4-12
Attorney for Def. Def not present as represented by counsel Case No. CR07-
Others Present Officer Tyson Bennett Date 4-12-07
Time 11:32 Am

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Ms. Evans informed the Court that they now have a hard copy of the GPS tracking data.

(1132) Officer Tyson Bennett signed the supplemental return of the search warrant in open Court. Court signed the supplemental order & supplemental return of the search warrant.

(1135) Court recessed at 11:35 Am

CASE NO. CR07-1378

2007 APR 12 AM 11:38

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 882-8580 Ext. 3316
ISB No. 2613

LATAH COUNTY NO. 119
BY [Signature] DEPUTY

APR 12 2007

J. DAVE [Signature]
SHERIFF

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the)
Application for a Search)
Warrant for SPRINT.)

Case No. CR07-1378

**SUPPLEMENTAL RETURN OF
SEARCH WARRANT**

STATE OF IDAHO)
:ss.
County of Latah)

I, Tyson Berrett, the officer by whom this Warrant was
executed, do swear the appended supplemental inventory contains a
true and detailed account of additional property received by me or
other officers pursuant to this Warrant, and that this Warrant and
property have been duly returned before the undersigned Judge at
1135 o'clock am.m., this 12th day of April,
2007.

[Signature]
Officer

SUBSCRIBED and SWORN to before me this 12th day of April,
2007.

[Signature]
W.C. Hamlett
MAGISTRATE

00282

SUPPLEMENTAL RETURN OF SEARCH WARRANT

ORIGINAL

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LATAH

IN THE MATTER OF
THE APPLICATION
FOR A SEARCH WARRANT FOR

Case No. _____
SUPPLEMENTAL
RECEIPT AND
INVENTORY OF WARRANT

On the 3rd day of April 2007 at approximately 0941 o'clock
M., The following peace officers: Tyson Garrett

Served the Search Warrant heretofore issued upon the place and/or person(s) described
Therein as directed in said Search Warrant. Entrance was obtained by: FAXED

THE WARRANT

The person(s) found in said place were: NONE

The property found and taken and the location within or upon said place and/or
person(s) are as follows:

DESCRIPTION OF PROPERTY

LOCATION/PERSON

LIVE GPS TRACKING FOR 916-792-3679

VIA PHONE & FAX

RECEIPT AND INVENTORY

PAGE 1 OF 2 PAGES

00283

This Receipt and Inventory was made in the presence of:

KATE MECHAM

A copy hereof was given to the following named person(s) on the _____ day of _____, 20____ ;

A copy hereof was left on this date in a conspicuous place in the place searched, there being no person(s) present during said search:

FAKED TO SUBPOENA COMPLIANCE

DATED this 12th day of April, 2007

Kate Mecham

WITNESS

TZ BORRATA

PEACE OFFICER

The undersigned person(s) hereby acknowledge receiving a copy hereof on this _____ day of _____, 20____ :

RECEIPT AND INVENTORY

PAGE 2 OF 2 PAGES

00284

CASE NO. CR07-1378

2007 APR 12 AM 11:38

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 882-8580 Ext. 3316
ISB No. 2613

FILED
BY [Signature] DEPUTY
A.M. 1:19 P.M.

JUL 17 2009

J. DAVID NAVARRO, Clerk
By S. McCormack
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the)
Application for a Search)
Warrant for SPRINT.)
_____)

Case No. CR07-1378
SUPPLEMENTAL ORDER

In the above-entitled matter, this Court having heretofore issued a Search Warrant, and the said Search Warrant having been served according to law, and the Return of Warrant having been duly made as directed in said Search Warrant to this Court, and a supplemental written inventory of the property found and seized having been duly made and taken before the undersigned Magistrate or Judge and filed herein;

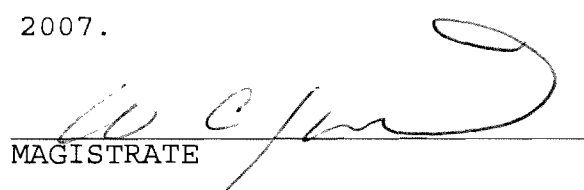
NOW, THEREFORE IT IS HEREBY ORDERED that the said Peace Officer shall deliver or cause to be delivered, the property described in said supplemental inventory to the Moscow Police

ORIGINAL

00285

Department for the purpose of preserving said property for use as evidence or until further order of this Court. Once any related criminal case has been concluded, including the expiration of time for appeal, the property can be released or disposed of upon authorization of the prosecuting attorney.

DATED this 12th day of April, 2007.


MAGISTRATE

CASE NO. CR207-1378

2009 JUL -8 PM 12: 08

CLERK OF DISTRICT COURT
LATAH COUNTY

BY MB DEPUTY

NO. _____
FILED _____
A.M. _____ P.M. 1:22

JUL 17 2009

J. DAVID NAVARRO, Clerk
By S. McCormack
DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 883-2246
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff,

V.

JOHN JOSEPH DELLING,
Defendant.

Case No. CR-2007-1378

NOTICE OF FILING AMENDED
CRIMINAL COMPLAINT

COMES NOW THE STATE OF IDAHO, by and through Latah County Prosecuting Attorney, and files herewith an Amended Criminal Complaint charging the above-named defendant with the crime of Murder in the Second Degree. This amendment is being filed pursuant to an agreement that this case will be transferred to Ada County pursuant to

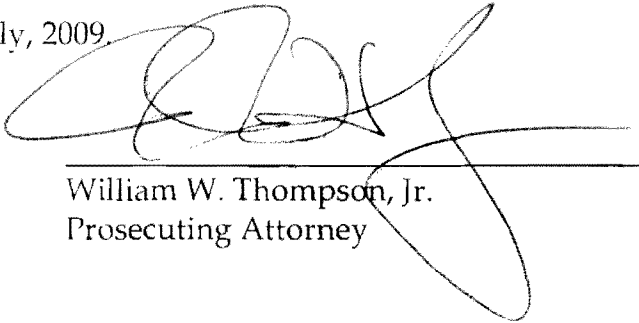
NOTICE OF FILING AMENDED
CRIMINAL COMPLAINT: Page -1-

ORIGINAL

00287

Idaho Criminal Rule 20, and that the defendant will thereafter plead guilty to the amended charge and be sentenced in Ada County.

DATED this 8 day of July, 2009.



William W. Thompson, Jr.
Prosecuting Attorney

CASE NO. CR07-1378

2009 JUL -8 PM 12:08

CLERK OF DISTRICT COURT
LATAH COUNTY

BY MS DEPUTY

NO. 122
AM. 1:22

JUL 17 2009

J. DAVID NAYLOR, CLERK
By S. McGinnick
DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843
Phone: (208) 883-2246
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
Plaintiff,)
V.)
JOHN JOSEPH DELLING,)
DOB: [REDACTED])
SSN: [REDACTED])
Defendant.)
_____)

Case No. CR-2007-01378

AMENDED CRIMINAL COMPLAINT

William W. Thompson, Jr., Latah County Prosecuting Attorney, complains and says that JOHN JOSEPH DELLING, in Latah County, State of Idaho, on or about the 31st day of March, 2007, did then and there commit a crime against the People of the State of Idaho: MURDER IN THE SECOND DEGREE, Idaho Code 18-4001, 4003, 4004, a Felony, committed as follows:

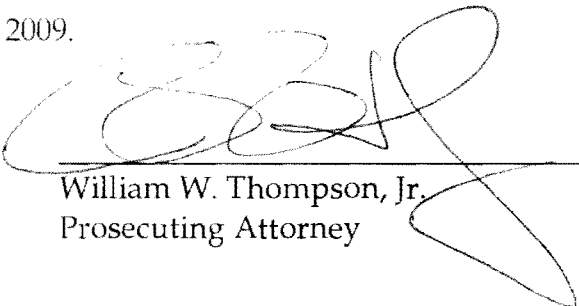
That the Defendant, JOHN JOSEPH DELLING, on or about the 31st day of March, 2007, in Moscow City, County of Latah, State of Idaho, did unlawfully and with malice aforethought, kill and murder David Boss, a human being, by shooting him in the head, from which he died.

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All of which is contrary to the form, force and effect of the statutes above cited, and against the peace and dignity of the People of the State of Idaho.

WHEREFORE complainant REQUESTS that the defendant be dealt with according to law.

Dated this 8 day of July, 2009.



William W. Thompson, Jr.
Prosecuting Attorney

CASE NO. CR07-1378

2009 JUL -8 PM 12:08

CLERK OF DISTRICT COURT
LATAH COUNTYBY CB DEPUTYNO. _____
A.M. _____ P.M. 1:22

JUL 17 2009

J. DAVID NAVARRO
By S. McCormack
DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
 WILLIAM W. THOMPSON, JR.
 PROSECUTING ATTORNEY
 Latah County Courthouse
 P.O. Box 8068
 Moscow, Idaho 83843-0568
 (208) 883-2246
 ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

| | | |
|----------------------|---|-----------------------|
| STATE OF IDAHO, |) | |
| Plaintiff, |) | |
| |) | Case No. CR-2007-1378 |
| V. |) | |
| |) | STIPULATION TO |
| JOHN JOSEPH DELLING, |) | TRANSFER |
| Defendant. |) | |
| _____ |) | |

COMES NOW THE STATE OF IDAHO, by and through Latah County Prosecuting Attorney William W. Thompson, Jr. and Ada County Prosecuting Attorney Greg H. Bower, and the above named defendant, by and through August H. Cahill, his undersigned attorney, and hereby stipulate to the transfer of this case to Ada County for plea and sentence pursuant to Idaho Criminal Rule 20. In support of this stipulation:

1. The defendant, JOHN JOSEPH DELLING, is currently held in Ada County

ORIGINAL

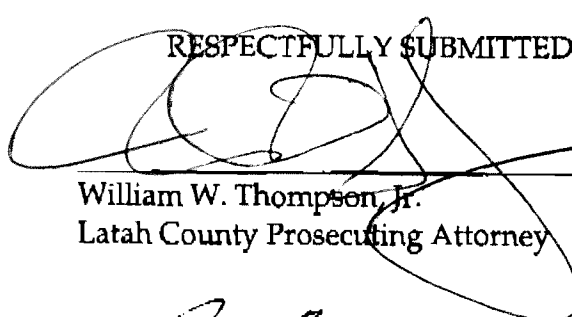
00291

pending sentencing on a charge of Second Degree Murder in State of Idaho v. John Delling,
Ada County Case No. CR-FE-2007-0000663.

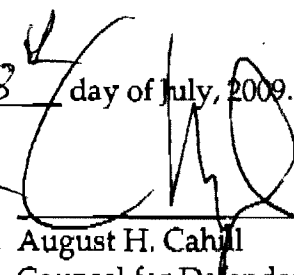
2. The defendant, John Delling, by and through his undersigned attorney, states that he wishes and is prepared to plead guilty to the amended charge of Second Degree Murder in the instant case, and consents to disposition of this case in Ada County.

3. The undersigned Prosecuting Attorneys for Latah and Ada County agree to and approve the transfer of this case to Ada County for plea and sentencing in conjunction with the above-referenced Ada County case.

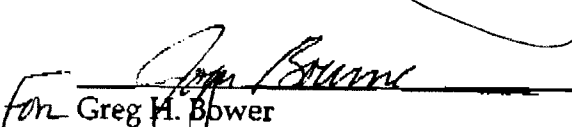
RESPECTFULLY SUBMITTED this 8 day of July, 2009.



William W. Thompson, Jr.
Latah County Prosecuting Attorney



for August H. Cahill
Counsel for Defendant



for Greg H. Bower
Ada County Prosecuting Attorney

NO _____
AM _____ 1:27

JUL 17 2009

J. DAVID ...
CASE NO. CR-2007-1378

2009 JUL -8 PM 1:02

CLERK OF DISTRICT COURT
LATAH COUNTY

BY MB DEPUTY

RECEIVED
JUL 15 2009
ADA COUNTY CLERK

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

| | | |
|----------------------|---|--------------------------|
| STATE OF IDAHO, |) | |
| Plaintiff, |) | |
| |) | Case No. CR-2007-01378 |
| V. |) | |
| |) | ORDER TO TRANSFER |
| JOHN JOSEPH DELLING, |) | |
| Defendant. |) | |
| _____ |) | |

The Court having reviewed the stipulation of the parties and good cause appearing;

IT IS HEREBY ORDERED that the above entitled matter shall be, and is hereby transferred to the District Court of the Fourth Judicial District, in and for the County of Ada for plea and sentencing.

SO ORDERED this 8th day of July, 2009.

W.C. Hamlett
W.C. Hamlett
Magistrate Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete and correct copies of the foregoing

ORDER TO TRANSFER were delivered to the following as indicated:

| | |
|----------------------------------|---|
| August H. Cahill | <input checked="" type="checkbox"/> U.S. Mail |
| Ada Co. Public Defender's Office | <input type="checkbox"/> Overnight Mail |
| 200 W. Front Street, Rm 1107 | <input type="checkbox"/> Fax |
| Boise, ID 83702 | <input type="checkbox"/> Hand Delivery |

| | |
|---------------------------------|---|
| Greg H. Bower | <input checked="" type="checkbox"/> U.S. Mail |
| Ada County Prosecuting Attorney | <input type="checkbox"/> Overnight Mail |
| 200 W. Front Street, Rm 191 | <input type="checkbox"/> Fax |
| Boise, ID 83702 | <input type="checkbox"/> Hand Delivery |

| | |
|---------------------------|---|
| Clerk of the Court | <input checked="" type="checkbox"/> U.S. Mail |
| Ada County District Court | <input type="checkbox"/> Overnight Mail |
| 200 W. Front Street | <input type="checkbox"/> Fax |
| Boise, ID 83702 | <input type="checkbox"/> Hand Delivery |

| | |
|-----------------------------------|---|
| William W. Thompson, Jr. | <input type="checkbox"/> U.S. Mail |
| Latah County Prosecuting Attorney | <input type="checkbox"/> Overnight Mail |
| Latah County Courthouse | <input type="checkbox"/> Fax |
| Moscow, ID 83843 | <input checked="" type="checkbox"/> Hand Delivery |

on this 8 day of July, 2009.

SUSAN PETERSEN

Latah County Clerk of the Court

By: Sue Anderson

Deputy Clerk

CASE NO. CR07-1378

2009 JUL 10 PM 2:18

CLERK OF DISTRICT COURT
LATAH COUNTY
BY MB DEPUTY

NO. _____ FILED
A.M. _____ P.M. 1:27

JUL 17 2009

J. DAVID NAVARRE, Clerk
By S. McCormack
DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 883-2246
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

| | | |
|----------------------|---|-----------------------|
| STATE OF IDAHO, |) | |
| Plaintiff, |) | |
| |) | Case No. CR-2007-1378 |
| V. |) | |
| |) | STIPULATION TO |
| JOHN JOSEPH DELLING, |) | TRANSFER |
| Defendant. |) | |
| _____ |) | |

COMES NOW THE STATE OF IDAHO, by and through Latah County Prosecuting Attorney William W. Thompson, Jr. and Ada County Prosecuting Attorney Greg H. Bower, and the above named defendant, by and through August H. Cahill, his undersigned attorney, and hereby stipulate to the transfer of this case to Ada County for plea and sentence pursuant to Idaho Criminal Rule 20. In support of this stipulation:

1. The defendant, JOHN JOSEPH DELLING, is currently held in Ada County

ORIGINAL

00295

pending sentencing on a charge of Second Degree Murder in State of Idaho v. John Delling,
Ada County Case No. CR-FE-2007-0000663.

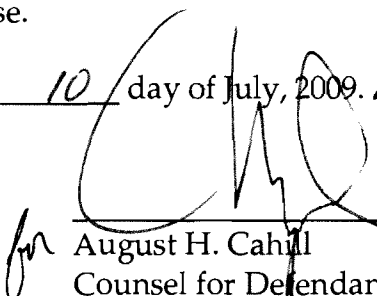
2. The defendant, John Delling, by and through his undersigned attorney, states that he wishes and is prepared to plead guilty to the amended charge of Second Degree Murder in the instant case, and consents to disposition of this case in Ada County.

3. The undersigned Prosecuting Attorneys for Latah and Ada County agree to and approve the transfer of this case to Ada County for plea and sentencing in conjunction with the above-referenced Ada County case.

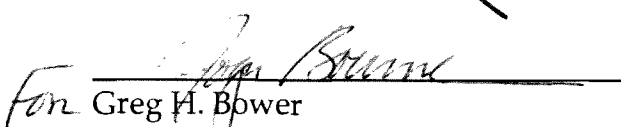
RESPECTFULLY SUBMITTED this 10 day of July, 2009. *name for name to date of filing copy (7/8/09)*



William W. Thompson, Jr.
Latah County Prosecuting Attorney

for 

August H. Cahill
Counsel for Defendant

for 

Greg H. Bower
Ada County Prosecuting Attorney

ADA COUNTY PUBLIC DEFENDER'S
Attorney for Defendant
200 W. Front, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

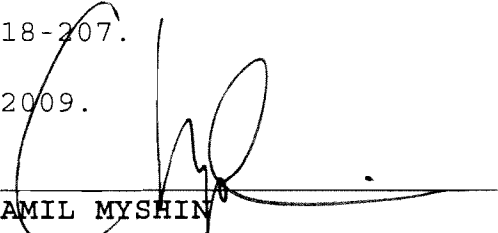
NO. _____
AM. 10 _____
JUL 24 2009
J. D. MYSHIN, Clerk
By _____
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|------------------|---|---------------------------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff, |) | Criminal No. CR-FE-2007-0001625 |
| |) | |
| vs. |) | |
| |) | |
| JOHN J. DELLING, |) | NOTICE OF INTENT TO |
| |) | PRODUCE EVIDENCE PURSUANT |
| Defendant. |) | TO I.C. § 18-207 |
| |) | |

COMES NOW, The above named Defendant, JOHN J. DELLING, by and through his Attorney of Record, the Ada County Public Defender's Office, AMIL MYSHIN, handling attorney, and hereby notifies this Court and the State of Idaho that he intends to produce evidence at trial on the issue of state of mind of the Defendant at the time of the allegations against him. This notice is given pursuant to I.C. § 18-207.

DATED This 24th day of July, 2009.


AMIL MYSHIN
Attorney for Defendant

AMENDED NOTICE OF INTENT TO PRODUCE EVIDENCE
PURSUANT TO I.C. § 18-207, Page 1


00297

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on this 24th day of July, 2009, I mailed a true and correct copy of the foregoing, NOTICE OF INTENT TO PRODUCE EVIDENCE PURSUANT TO I.C. § 18-207 to the:

ADA COUNTY PROSECUTOR

by depositing the same in the Interdepartmental Mail.


Stephanie Martinez

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant
200 W. Front St., Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

NO. _____
AM. 10 _____
J. D. [Signature] Clerk
By [Signature] ARRIEZ
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|-----------------|---|----------------------------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff, |) | Criminal No. CR-FE-2007-0001625 |
| |) | |
| vs. |) | OBJECTION TO ACCESS TO DEFENDANT |
| |) | BY STATE'S EXPERTS AND MOTION TO |
| JOHN J DELLING, |) | DECLARE I.C. §18-207 AND REPEAL |
| |) | OF I.C. §§18-208 AND 18-209 |
| |) | UNCONSTITUTIONAL |
| |) | |
| Defendant. |) | |
| |) | |

COMES NOW, The above named Defendant, by and through his Attorney of Record, the Ada County Public Defender's Office, **AMIL MYSHIN**, handling attorney, and moves this Honorable Court to find Idaho Code § 18-207 unconstitutional; and states the following in support.

1. Idaho Code § 18-207 is unconstitutional on its face and as applied. This motion is made pursuant to the 5th, 6th, 8th, and 14th Amendments to the U.S. Constitution; and, Article I, Sections 2, 7 and 13 of the Idaho Constitution. The grounds for this Motion are that the legislative abrogation of mental condition as a defense, I.C. §§18-207, 18-208 and 18-209, violates the Defendant's rights to equal protection; the effective assistance of counsel; to present a defense to a fair trial; to

OBJECTION TO ACCESS TO DEFENDANT BY STATE'S EXPERTS
AND MOTION TO DECLARE I.C. §18-207 AND REPEAL OF
I.C. §§18-208, 18-209 UNCONSTITUTIONAL, Page 1

confront the evidence against him to remain silent; to due process; and, to be free from cruel and unusual punishment including the imposition of punishment through an unfair process, as those rights are protected and guaranteed by the U.S. and Idaho Constitutions as cited above.

2. The 5th and 14th Amendments of the United States Constitution, and Article 1, Section 13 of the Idaho Constitution guarantee the right to remain silent and to be free from self-incrimination. This right has been recognized by the Idaho Supreme Court to exist throughout a criminal proceeding, even after a plea of guilty. Estrada v. State, 143 Idaho 558, 149 P.3d 833 (2006). Therefore, the Defendant asserts his privilege against self-incrimination and objects to the State's Motion for Access.
3. In addition, the Idaho Constitution can provide more protection than the federal constitution does and the Defendant asserts that it does. State v. Thompson, 114 Idaho 746, 760 P.2d 1162 (1988). This issue was not addressed by the Idaho Court of Appeals in State v. Santistevan, 143 Idaho 527, 148 P.3d 1273 (2006).
4. The Defendant hereby incorporates the Record and testimony given in Case No. CR-FE-2007-0000663 by this reference.

DATED This 24th day of July, 2009.


AMIL MYSHIN
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on this 24th day of July,
2009, I mailed a true and correct copy of the foregoing,
OBJECTION TO ACCESS TO DEFENDANT BY STATE'S EXPERTS AND MOTION TO
DECLARE I.C. 18-207 AND REPEAL OF I.C. 18-208, 209
UNCONSTITUTIONAL, to the:

ADA COUNTY PROSECUTOR

by depositing the same in the Interdepartmental Mail.


Stephanie Martinez

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant
200 W. Front St., Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

NO. _____
A.M. 10 _____
JUL 24 2007
J. DAVID [illegible]
By [illegible]
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|------------------|---|---------------------------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff, |) | Criminal No. CR-FE-2007-0001625 |
| |) | |
| vs. |) | MEMORANDUM |
| |) | |
| JOHN J. DELLING, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This Memorandum is made in support of Defendant's Objection to Access to Defendant by State's Experts and Motion to Declare I.C. §18-207 and Repeal of I.C. §§18-208 and 18-209 unconstitutional.

ISSUES

1. The Idaho legislative abolishment of the insanity defense violates Delling's rights to equal protection under the law.
2. The Idaho legislative abolishment of the insanity defense violates Delling's rights to due process of law.

3. Abolition of the insanity defense and concomitant imprisonment of the mentally ill violates the right to be free from cruel and unusual punishment in conflict with principles stated in the decisions of the United States Supreme Court.

4. Idaho's abolition of an insanity defense deprives Delling of his Sixth Amendment Right to present a defense.

5. Idaho Code §18-207 violates Delling's right to remain silent and right to counsel.

6. The Idaho Constitution can provide greater protection than the United States Constitution does.

ARGUMENT

1. THE IDAHO LEGISLATIVE ABOLISHMENT OF THE INSANITY DEFENSE VIOLATES DELLING'S RIGHTS TO EQUAL PROTECTION UNDER THE LAW.

Article 1, Sections 2 and 13 of the Idaho Constitution and 14th Amendment to the U.S. Constitution, require that similarly situated persons must be treated similarly under the law. If similarly situated persons are to be treated differently the State must support that disparate treatment by providing a reasonable basis, which substantially furthers a legitimate legislative purpose. State v. Avelar, 129 Idaho 700, 931 P.2d

1218 (7997); Douglas v. California, 372 U.S. 353, 83 S.Ct. 814 (1963).

Idaho's legislative abolition of any insanity defense unconstitutionally discriminates between similarly situated mentally ill defendants based upon the content of their delusions. Under Idaho's scheme, equally mentally ill defendants with different delusions would be treated differently based upon whether or not the delusions relate to specific intent.

Thus, the Idaho legislature treats mentally ill defendants differently under the law based solely upon an arbitrary and capricious distinction between the content, not the quality, of the delusions of each. This distinction is truly arbitrary and capricious and does not serve to substantially further any legitimate legislative purpose.

2. THE IDAHO LEGISLATIVE ABOLISHMENT OF THE INSANITY DEFENSE VIOLATES DELLING'S RIGHTS TO DUE PROCESS OF LAW.

While forty-six states, the federal government and at least 100 other nations of the world recognize an insanity defense, Idaho, Montana, Utah and Kansas have outlawed the defense and are subjecting mentally ill persons in those states to criminal prosecution and imprisonment in violation of the constitution.

"Until 1982, the insanity defense was available in Idaho criminal cases as a matter of common law since
MEMORANDUM, Page 3

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the time judicial decisions were first reported in the territory."

Brian E. Elkins, *Idaho Repeal of the Insanity Defense: What are We Trying to Prove?*, 31 Idaho L. Rev. 151, 153 (1994) [citing Idaho decisions dating back to People v. Walter, 1 Idaho 386 (1871)]

In 1969, in State v. White, 93 Idaho 153, 456 P.2d 797 (1969), the Idaho Supreme Court adopted the Model Penal Code's standard for the insanity defense. By 1972, the Idaho legislature codified that test:

Mental illness as defense. -

- (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks the substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

Idaho Code § 18-207 (1) (1972) (repealed 1982).

In 1982, the Idaho legislature repealed this statute and replaced it with a new statute:

Mental condition not a defense ***

- (1) Mental condition shall not be a defense to any charge of criminal conduct.

Idaho Code §18-207(1) (1982).

Montana, Utah and more recently Kansas have enacted similar legislation abolishing insanity as a defense and have instead, like Idaho, adopted some form of the so called Mens Rea Model for

dealing with mentally ill defendants. State v. Searcy, 118 Idaho 632, 798 P.2d 914 (1990).

The Mens Rea Model defines criminal intent only in terms of ability to form the intent to do a certain act and eliminates the concept of appreciation of the wrongfulness of the act. This approach "assumes that all crimes require the simple intent to do an act and it ignores the fact that most crimes have a required element of knowledge, willfulness or something beyond the mere performance of an act. It treats all criminal intent more like an aspect of strict liability." Finger v. Nevada, 27 P.3d 66, 75 (Nev. 2001) cert. den. 534 U.S. 1127 (2002) (criticizing Idaho, Utah and Montana and holding insanity defense protected by state and federal due process clauses).

Commenting on the Mens Rea Model, the American Bar Association's Standing Committee on Association Standards for Criminal Justice stated:

"This approach, which would permit evidence of mental condition on the requisite mental element of the crime but eliminate mental non-responsibility as an independent, exculpatory doctrine, has been proposed in several bills in Congress and adopted in Montana, Idaho and Utah. The ABA has rejected it out of hand. Such a jarring reversal of hundreds of years of moral and legal history would constitute an unfortunate and unwarranted overreaction to the Hinckley verdict."

ABA, *Standing Committee on Association Standards for Criminal Justice, Report to the House of Delegates, August, 1984, Standards 6.1, Commentary p. 327.*

The supreme courts of Idaho, Montana, Utah and Kansas have upheld the abolition of the insanity defense, and the adoption of some form of the mens rea model, against due process and Eighth Amendment challenges. These courts have held that this approach does not offend basic, fundamental principles of due process because mentally ill defendants are still allowed to present evidence that they lack the mental capacity to form the intent to do the act, regardless of whether they know the act is wrong or can conform their conduct to the requirements of law.

Beginning in 1910 with Washington and up to 2001 with Nevada, many state supreme courts have held that an insanity defense is entitled to constitutional protection under either or both due process and fair jury trial guarantees. Idaho, Kansas, Montana and Utah have held that insanity as a defense is not entitled to any constitutional protection.

The Idaho Supreme Court, in State v. Card, 121 Idaho 425, 825 P.2d 1981 (1991), as a matter of *stare decisis*, held that insanity as a defense is not entitled to constitutional protection under the due process clause.

In Card, a majority of the Idaho Supreme Court, quoting extensively from Searcy, supra, reaffirmed the holding in Searcy, "even though a majority of [the Idaho Supreme Court], as [then] constituted, entertain[ed] the view that the legislative abolition of the insanity defense violates constitutional due process..." Card, at 460, 825 P.2d at 1116 (Bistline, J., dissenting).

The court stated:

Idaho Code §18-207 does not remove the element of criminal responsibility for the crime. The prosecution is still required to prove beyond a reasonable doubt that a defendant had the mental capacity to form the necessary intent. Idaho Code §18-207 merely disallows mental condition from providing a complete defense to the crime and may allow the conviction of persons who may be insane by some former insanity test or medical standard, but who nevertheless have the ability to form intent and to control their actions. The statute expressly allows admission of expert evidence on the issues of mens rea or any state of mind, which is an element of the crime.

Card, supra, at 430, 825 P.2d at 1086.

In conflict to Idaho decisions and those in Montana, Utah and Kansas, other state supreme courts that have decided the issue have concluded that insanity as a defense to criminal charges has deep roots in our law and that it "is fundamental to our system of jurisprudence that a person cannot be convicted for acts performed while insane." People v. Skinner, 39 Cal. 3rd

765, 771, 704 P.2d 752 (1985) (citations omitted).

Consistent with the opinion of the California Supreme Court in Skinner, the Nevada Supreme Court recently addressed this issue in Finger v. Nevada, supra. After analyzing insanity as a defense throughout history, the court held:

We conclude that legal insanity is a well-established and fundamental principle of the law of the United States. It is therefore protected by the Due Process Clauses of both the United States and Nevada Constitutions. The legislature may not abolish insanity as a complete defense to a criminal offense. Thus the provisions of S.B. 314 abolishing the insanity defense are unconstitutional and unenforceable.

Finger, 27 P.3d at 84.

In reviewing the decisions of the Idaho, Utah and Montana Supreme Courts upholding the constitutionality of the abolition of the insanity defense, the Nevada Supreme Court stated that "[g]iven the Supreme Court's discussion of insanity in Leland v. Oregon, 343 U.S. 790 (1952), Morissette v. United States, 342 U.S. 246 (1952) and Penry v. Lynaugh, 492 U.S. 302 (1989) we cannot agree with the analysis of federal law contained in the majority opinions" in the decisions in Idaho, Montana and Utah. Finger, supra, at 83.

Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933), was a case involving the constitutionality of a law requiring the defense of insanity to be tried only under special plea. In
MEMORANDUM, Page 8

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Ingles, the Supreme Court of Colorado recognized that "[o]ne who is insane when he commits an act prohibited by law cannot be held guilty of a crime. A statute providing that insanity shall be no defense to criminal charges would be unconstitutional. One accused of a crime is entitled to raise and have a jury pass upon the question of whether he was sane or insane when he committed the act with which he is charged.

Justice McDevitt, dissenting from the majority opinion upholding the abolition of the insanity defense by Idaho in Searcy, traced written accounts of the insanity defense in the context of civil liability in English law back to as early as 1265 A.D., with insanity being recognized as a defense in English criminal law during the reign of Edward II (1307-1321), and being perfected under Edward III (1326-1327). Searcy, at 646, 798 P.2d at 928 (McDevitt, J., dissenting).

Moreover, after lengthy hearings following the John Hinckley trial, Congress rejected the abolition of the insanity defense "because it felt that concerns about the dangers of an insanity defense were overstated and because abolition 'would alter the fundamental basis of Anglo-American criminal law: The existence of moral culpability as a prerequisite for punishment.'" United States v. Pohlott, 827 F.2d 899, 900 (3rd Cir. 1987) (quoting H.R.

Rep. No. 98-577, 98th Con. 1st Sess. 7-8 (1983) [emphasis added]).

Following protracted hearings, rather than opting for its abolition, Congress adopted legislation providing for a statutory affirmative defense of insanity.

Thus, Idaho's position, and that of Montana, Utah and Kansas, that an insanity defense is not a fundamental principle of our law, entitled to protection under the due process clause, is in stark conflict with the decisions and stated principles of other state supreme courts and the United States Congress.

3. ABOLITION OF THE INSANITY DEFENSE AND CONCOMITANT IMPRISONMENT OF THE MENTALLY ILL VIOLATES THE RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT IN CONFLICT WITH PRINCIPLES STATED IN THE DECISIONS OF THE UNITED STATE SUPREME COURT.

The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishment by the States. Punishment is cruel and unusual if it is inflicted in an uncivilized and inhumane way. Furman v. Georgia, 408 U.S. 328, 268 (1972) (Brennan, J., concurring); Trop v. Dulles, 356 U.S. 86, 99 (1958). Therefore, the legislature's power to punish must be "exercised within the limits of civilized standards." Trop, 356 U.S. at 100.

The standards of a civilized society may be measured by its history as well as its evolving moral and legal standards. The

history to be considered includes that which was considered cruel and unusual at the time the Bill of Rights was adopted. Ford v. Wainwright, 477 U.S. 399, 405 (1986).

The history of what was considered cruel and unusual at the time the Bill of Rights was adopted indicates that it "was well settled at common law that 'idiots,' together with 'lunatics' were not subject to punishment for criminal acts committed under those incapacities." Penry v. Lynaugh, 492 U.S. 302, 331 (1989).

Even before the adoption of the Constitution, the law recognized that it was both morally and logically abhorrent to punish a person for acts committed because of mental illness. See, Elkins, Supra, at 160 *et seq.*

The Court has relied on the understanding that to punish the insane is cruel and unusual punishment. In Penry v. Lynaugh, 492 U.S. 302 (1989), the Court considered whether it was cruel and unusual punishment for a state to execute a mentally retarded individual. The Court stated in part:

The common law prohibition against punishing "idiots" for their crimes suggest that it may indeed be "cruel and unusual" punishment to execute persons who are profoundly or severely retarded and wholly lacking in the capacity to appreciate the wrongfulness of their actions. *Because of the protections afforded by the insanity defense today, such a person is not likely to be convicted or face the prospect of punishment.*

Id. at 333 (emphasis added).

MEMORANDUM, Page 11

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In Idaho, the safeguard the Court relied on in Penry, does not exist. As a consequence, conviction, imprisonment and or execution of a mentally ill defendant constitute punishments that are cruel and unusual in violation of the Eighth Amendment.

And, "[a]lthough the determination that a severe punishment is excessive may be grounded in a judgment that it is disproportionate to the crime, the more significant basis is that the punishment serves no penal purpose more effectively than a less severe punishment." Furman v. Georgia, 408 U.S. 328, 280 (1972) (Brennan, J., concurring).

Punishing a person for an act committed as a result of mental illness is nothing more than a gratuitous infliction of pain.

The evolving standards of decency in the United States reflect that only 4 of the 50 states have abolished the insanity defense. The other 46 States, the federal government and the 100 State Parties to the Rome Statute all recognize that mental illness may constitute a defense to criminal charges in a way other than relating merely to the ability to form the required mental state.

In holding that the Eighth Amendment prohibits the execution of mentally retarded offenders, the court looked to define

evolving standards of decency and contemporary values by looking to objective factors and stated that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." Atkins v. Virginia, 536 U.S. 304, 311 (2002) (quoting Penry, supra, 492 U.S. at 331).

Certainly, the 46 states, the federal government and the 100 State Parties to the Rome Statute that recognize an insanity defense evidence both a national consensus and an international consensus that sentencing a man to death for an act committed as a result of mental illness is not in comport with the evolving standards of decency that mark the progress of a maturing society.

Because the abolishment of the insanity defense in Idaho is inconsistent with the current, the evolving and the historical morals and laws of the United States and most other countries of the world, that abolishment, as reflected in I.C. §18-207(1), and concomitant imprisonment of the mentally ill is cruel and unusual and violates the Eighth Amendment. Atkins, supra; Simmons, supra; see also, Robinson v. California, 370 U.S. 660 (1962) (punishment cannot be inflicted on the basis of a physical or mental condition of a person).

4. IDAHO'S ABOLITION OF AN INSANITY DEFENSE DEPRIVES
DELLING OF HIS SIXTH AMENDMENT RIGHT TO PRESENT A
DEFENSE.

The right to present a defense is a fundamental right protected by the Sixth and Fourteenth Amendments. The "Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 2146 (1986) (quoting California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 2532 (1984). See also, Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 1045 (1973) ("The right of an accused in a criminal trial is, in essence, the right to a fair opportunity to defend against the State's accusations.").

Idaho abolition of the insanity defense prohibits Dellling from exercising his essential Sixth and Fourteenth Amendment rights to present a complete defense to the State's charges herein.

5. IDAHO CODE §18-207 VIOLATES DELLING'S RIGHT TO REMAIN
SILENT AND RIGHT TO COUNSEL.

The Idaho Supreme Court in Estrada v. State, 143 Idaho 558, 149 P.3d 833 (2006), recognized that Defendant's have constitutional protection from self incrimination and the right to counsel both before trial and at sentencing.

The availability of the Fifth Amendment privilege against self-incrimination "does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission of the exposure which it invites." Application of Gault, 387 U.S. 1, 49, 87 S.Ct. 1428, 1455, 18 L.Ed.2d 527, 558 (1967) (noting the privilege may be claimed in a civil or administrative proceeding if the statement is or may be inculpatory). This Court's decisions clearly indicate that both at the point of sentencing and earlier, for purposes of a psychological evaluation, a defendant's Fifth Amendment privilege against self-incrimination applies. [FN2] See State v. Lankford, 116 Idaho 860, 871, 781 P.2d 197, 208 (1989) ("The fifth amendment privilege against self-incrimination and the sixth amendment right to counsel apply to custodial psychiatric exams conducted prior to sentencing as well as those conducted prior to trial."); State v. Wilkins, 125 Idaho 215, 217-18, 868 P.2d 1231, 1233-34 (1994) (holding that the Fifth Amendment privilege protects a defendant against compelled testimony at the sentencing hearing in a non-capital case); State v. Odiaga, 125 Idaho 384, 387, 871 P.2d 801, 804 (1994) ("Following Idaho's repeal of the insanity defense, no statutory scheme remains through which a psychological evaluation can be compelled without threatening the rights guaranteed under both [the Fifth Amendment to the United States Constitution and Article I, Section 13, of the Idaho Constitution]."); State v. Wood, 132 Idaho 88, 100, 967 P.2d 702, 714 (1998) (noting that [I]f a psychiatrist or psychologist had been appointed by the court for purposes of a presentence investigation, counsel for Wood would have had the opportunity to advise his client of the possible uses of the information and of the privilege against self-incrimination.").

Estrada v. State, supra.

It seems illogical to say that a defendant has the right to refuse to speak to a psychosexual evaluator and not be punished but a defendant doesn't have that same right when being evaluated under I.C. §18-207.

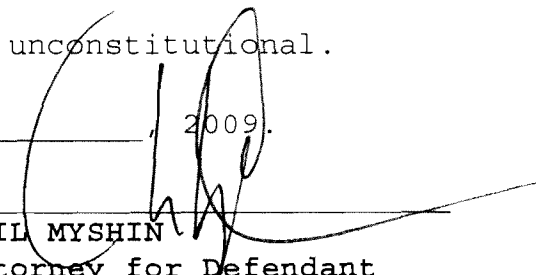
6. THE IDAHO CONSTITUTION CAN PROVIDE GREATER PROTECTION TO DELING THAN THE UNITED STATES CONSTITUTION DOES.

The Idaho Supreme Court has held that it "is free to interpret our state constitution as more protective of the rights of Idaho citizens than the United States Supreme Court's interpretation of the federal constitution." State v. Guzman, 122 Idaho 981, 842 P.2d 660 (1992); State v. Thompson, 114 Idaho 746, 760 P.2d 1162 (1988). In this case, that greater protection should be applied to Delling.

CONCLUSION

The Defendant prays that this Court deny the State's Motion for Access to the Defendant and find Idaho Code §18-207 and the Repeal of Idaho Code §§18-208, 18-209 unconstitutional.

DATED This 24th day of July, 2009.



AMIL MYSHIN
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on this 24th day of July,
2009, I mailed a true and correct copy of the foregoing,
MEMORANDUM, to the:

ADA COUNTY PROSECUTOR

by depositing the same in the Interdepartmental Mail.

Stephanie Martinez
Stephanie Martinez

NO. _____
A.M. 10:20 P.M. FILED

AUG 3 - 2009

J. DAVID NAVARRO, Clerk
By [Signature] DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
PO Box 8068
Moscow, Idaho 83843-0568
(208) 883-2246
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

| | | |
|----------------------|---|-----------------------------|
| STATE OF IDAHO, |) | Case No. CR-FE-2007-0001625 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | INFORMATION |
| |) | |
| JOHN JOSEPH DELLING, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

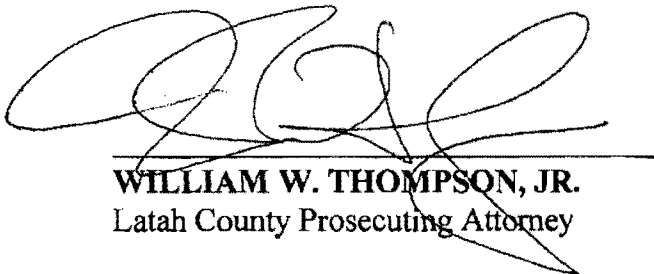
WILLIAM W. THOMPSON, JR., Prosecuting Attorney, in and for the County of Latah, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Latah, and states that JOHN JOSEPH DELLING is accused by this Information of the crime of: MURDER IN THE SECOND DEGREE, FELONY, I.C. §18-4001, 4002, 4003(g) which crime was committed as follows:

INFORMATION (DELLING), Page 1

00319

That the Defendant, JOHN JOSEPH DELLING, on or between the 30th and 31st day of March 2007, in the County of Latah, State of Idaho, did willfully, unlawfully, deliberately, and with malice aforethought, kill and murder David Boss, a human being, by shooting David Boss in the head with a .38 caliber revolver from which he died.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



WILLIAM W. THOMPSON, JR.
Latah County Prosecuting Attorney

ADA COUNTY PUBLIC DEFENDER'S
Attorney for Defendant
200 W. Front, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

NO. _____ FILED
A.M. 10:00 P.M. _____
AUG 3 - 2009
J. DAVID NAVARRO, Clerk
By _____ DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|------------------|---|---------------------------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff, |) | Criminal No. CR-FE-2007-0000663 |
| |) | CR-FE-2007-0001625 |
| vs. |) | |
| |) | |
| JOHN J. DELLING, |) | STIPULATION FOR PLEA AGREEMENT |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMES NOW, The parties, AUGUST H. CAHILL, Attorney of Record
for JOHN J. DELLING, and ROGER BOURNE, Deputy Ada County
Prosecuting Attorney, and hereby stipulate and agree as follows:


1. The Defendant will plead guilty to Murder in the Second Degree, Felony, I.C. § 18-4001, 4002, 4003(g) in Case No. CR-FE-2007-0000663 and in Case No. CR-FE-2007-0001625.
2. In exchange for these pleas of guilty, the prosecutor will recommend concurrent sentences.
3. This conditional plea of guilty is made pursuant to I.C.R. 11(a)(2) reserving in writing the right, on appeal from the judgment, to review the following specified adverse rulings;
 - a. The Court's denial of the Defendant's Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and § 18-209 Unconstitutional and Objection to Access to Defendant by State's Experts.

STIPULATION, Page 1

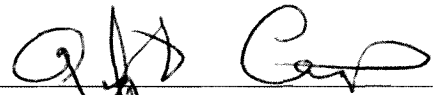
00321

b. The Court's granting of the State's
Motion For The Admission of I.C.R.
404(b) Evidence.

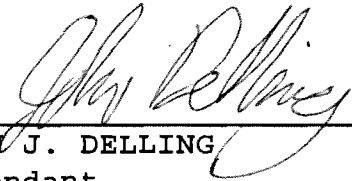
Respectfully submitted this this 3rd August day of ~~July~~, 2009.



ROGER BOURNE, Deputy Ada County
Prosecuting Attorney



AUGUST M. CAHILL
Attorney for Defendant



JOHN J. DELLING
Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DEBORAH A. BAIL
DISTRICT JUDGE

Date: Aug 3, 2009

COURT MINUTES

STATE OF IDAHO,)

Plaintiff,)

vs.)

John Delling P/C
Defendant,)

Case No. CR070001625

INITIAL ARRAIGNMENT

Appearances:

Deputy Prosecuting Attorney

Counsel for the State

Deputy Public Defender

Counsel for the Defendant

Interpreter

THIS TIME SET FOR INITIAL ARRAIGNMENT:

(☒) The Court informed the defendant of the charges filed being a felony and of the possible penalties which could be imposed.

(☒) The Court advised the defendant of the right to counsel at public expense in all proceedings of this Court.

(☒) Public Defender reaffirmed/appointed to represent the defendant.

() Mr. _____ appearing as counsel of record for the defendant.

() Right to counsel waived by the defendant.

(☒) The Court advised the defendant of the right to appeal from any judgment entered by this Court, to be represented by counsel in said appeal and of payment of costs incurred in said appeal at public expense, and of the appeal time being forty-two (42) days.

(☒) True copy of the Information delivered to the defendant and counsel.

(☒) True Name.

() Defendant's corrected name is _____

Ms Kelly has ct handed on information. Def Counsel step to probable cause and waives P.H.

00323

- (X) Formal reading of the Information waived by the Defendant.
- () The Court read the Information to the Defendant.
- (X) The Court advised the defendant of the right to a trial by jury, of the different charge(s) set forth in the Information, of the time, not less than one day that could be taken before entering a plea and the right to remain silent.
- (X) The Court advised the defendant that if a plea of guilty was entered to a charge, the presumption of innocence, the constitutional right to a trial by jury, the right to confront accusers, the privilege against self-incrimination and the right of self defense would be waived. All legal and factual defenses and any defects in the State's case would be waived.
- () Upon the request of the defendant, the Court continued this matter until _____ for entry of a plea.
- () Statutory time waived by the defendant.
- () In answer to the Court, the defendant entered a plea of "Not Guilty".
- () There being no objection by the defendant, the Court set this case for trial before the Court and a jury on _____ at _____ m.
- (X) In answer to the Court, the defendant entered a plea of "Guilty" *99 Sentence Concerned w/ other case & right to appeal is preserved*
- (X) Defendant sworn and examined regarding the plea.
- (X) The defendant indicated an understanding of the possible penalties and that no promises of leniency or threats had been made to induce the plea.
- (X) The defendant fully understands that BY PLEADING GUILTY the presumption of innocence, the constitutional right to a trial by jury, the right to confront accusers, the privilege against self incrimination and the right of self defense are waived. All legal and factual defenses and any defects in the State's case are waived.
- (X) The Court accepts the defendant's plea of "Guilty".
- () The Court set aside the defendant's plea of "Guilty" and directed the Clerk to enter a plea of "Not Guilty" on behalf of the defendant.
- () Request and Stipulation for Discovery submitted.

Mr. Cobill argues to the Ct re: no/ to declare 18-201 & appeal 18-208 & 18-209 unconstitutional & obj to access by the State effort & relies on the record argued in other cases. Ct denies no/ to declare unconstitutional and some rulings previously made apply. The State is entitled to access.

() Compliance date set for _____.

(✓) The Court ordered a presentence report and continued this matter until
Aug 18 v 19th at 9:30 am for said report and
disposition.

- (✓) Defendant remanded to the custody of the Sheriff.
- () Defendant continued on bond.
- () Defendant continued on own recognizance.

Reporter: Susan Gambee
Clerk: Carol Luedtka

Guilty Plea Advisory Form for use in Judge Bail's Court

AUG 3 - 2009

Defendant's Name: John Joseph Delling

J. DAVID NAVARETO, Clerk
Carl J. [Signature]
Deputy

Date: Aug. 3, 2009

Case Number: CR-FE-2009-0001625

Nature of Charges:

10 years Minimum & Maximum Possible Penalty: Life
Minimum & Maximum Possible Penalty: _____
Minimum & Maximum Possible Penalty: _____
Minimum & Maximum Possible Penalty: _____

STATEMENT OF RIGHTS & EXPLANATION OF WAIVERS BY PLEA OF GUILTY

(PLEASE INITIAL EACH RESPONSE)

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you elected to have a trial, the state could not call you as a witness or ask you any questions. However, anything you do say can be used as evidence against you in court. JD

I understand that by pleading guilty I am waiving my right to remain silent about the charge I am pleading guilty to both before and after trial.

2. The waiver of your right to remain silent only applies to your plea of guilty to the crime(s) in this case unless you are waiving your rights under *State v. Estrada*. Unless you waive your rights under *Estrada*, even after pleading guilty, you will still have the right to refuse to answer any question or to provide any information that might tend to show you committed some other crime(s). You can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty. JD

I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence. JD

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the judge for an attorney who will be paid by the county. JD

4. You are presumed to be innocent. You would be found guilty if: 1) you plead guilty in front of the judge, or 2) you are found guilty at a jury trial. JD

I understand that by pleading guilty I am waiving my right to be presumed innocent.

5. You have the right to a speedy and public jury trial. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. The state must convince each and every one of the jurors of your guilt beyond a reasonable doubt. JD

I understand that by pleading guilty I am waiving my right to a speedy and public jury trial. JD

6. You have the right to confront the witnesses against you. This occurs during a jury trial where the state must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call your own witnesses of your choosing to testify concerning your guilt or innocence. If you do not have the funds to bring those witnesses to court, the state will pay the cost of bringing your witnesses to court. JD

I understand that by pleading guilty I am waiving my right to confront the witnesses against me, an present witnesses and evidence in my defense. JD

QUESTIONS REGARDING PLEA

(Please answer every question. If you do not understand a question consult your attorney before answering.)

PLEASE CIRCLE ONE

1. Do you read and write the English language? YES NO

If not, have you been provided with an interpreter to help you fill out this form? YES NO

2. What is your age? 23

3. What is your true legal name? John Joseph Dellinger

4. How far did you go in school? college

If you did not complete high school, have you received either a general education diploma or high school

equivalency diploma? YES NO

5. Are you currently under the care of a mental health professional? YES NO

6. Have you ever been diagnosed with a mental health disorder? YES NO

If so, what was the diagnosis and when was it made?

Schizophrenia

7. Are you currently prescribed any medication? YES NO

If so, have you taken your prescription medication during the past 24 hours? YES NO

8. In the last 24 hours, have you taken any medications or drugs, or drank any alcoholic beverages which you believe affect your ability to make a reasoned and informed decision in this case? YES NO

9. Is there any other reason that you would be unable to make a reasoned and informed decision in this case? YES NO

10. Is your guilty plea the result of a plea agreement? YES NO

If so, what are the terms of that plea agreement? (If available, a written plea agreement should be attached hereto as "Addendum 'A'")

Concurrent sentences

11. I understand that my plea agreement is a non-binding plea agreement. This means that the court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, up to the maximum sentence for any offense. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea.

SD

12. As a term of your plea agreement, are you pleading

guilty to more than one crime? YES NO

If so, do you understand that your sentences for each crime could be ordered to be served either concurrently (at the same time) or consecutively (one after the other)? YES NO

13. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues? YES NO

If so, what issue are you reserving the right to appeal?

14. Have you waived your right to appeal your judgment of conviction and sentence as part of your plea agreement? YES NO

15. Have any other promises been made to you which have influenced your decision to plead guilty? YES NO

If so, what are those promises?

16. Do you feel you have had sufficient time to discuss your case with your attorney? YES NO

17. Have you told your attorney everything you know about the crime? YES NO

18. Is there anything you have requested your attorney to do that has not been done? YES NO

If yes, please explain.

19. Your attorney can get various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called discovery. Have you reviewed the evidence provided to your attorney during discovery? YES NO

20. Have you told your attorney about any witnesses who would show your innocence? YES NO

21. Do you understand that by pleading guilty you will waive any defenses, both factual and legal, that you believe you may have in this case? YES NO

22. Are there any motions or other requests for relief that you believe should still be filed in this case? YES NO

If so, what motions or requests? _____

23. Do you understand that if you enter an unconditional guilty plea in this case you will not be able to challenge any rulings that came before the guilty plea including: 1) any searches or seizures that occurred in your case, 2) any issues concerning the method or manner of your arrest, and 3) any issues about any statements you may have made to law enforcement? YES NO

24. Do you understand that when you plead guilty, you are admitting the truth of each and every allegation contained in the charge(s) to which you plead guilty? YES NO

25. Are you currently on probation or parole? YES NO
If so, do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole? YES NO

26. Are you aware that if you are not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship? YES NO

27. Do you know whether the crime to which you will plead guilty would require you to register as a sex offender? (I.C. § 18-8304) YES NO

28. Are you aware that if you plead guilty you may be required to pay restitution to the victims in this case? (I.C. § 19-5304) YES NO

29. Have you agreed to pay restitution to any other party as a condition of your plea agreement? YES NO
If so, to whom? _____

30. Is there a mandatory driver's license suspension as a result of a guilty plea in this case? YES NO
If so, for how long must your license be suspended? _____

31. Are you pleading guilty to a crime for which a

mandatory domestic violence, substance abuse, or
psychosexual evaluation is required? (I.C. §§ 18-
918(7)(a), -8005(9), -8317) YES NO

32. Are you pleading guilty to a crime for which you
may be required to pay the costs of prosecution and
investigation? (I.C. § 37-2732A(K)) YES NO

33. Are you pleading guilty to a crime for which you
will be required to submit a DNA sample to the state?
(I.C. § 19-5506) YES NO

34. Are you pleading guilty to a crime for which the
court could impose a fine for a crime of violence of up
to \$5,000, payable to the victim of the crime? (I.C. §
19-5307) YES NO

35. Do you understand that if you plead guilty to a
felony, during the period of your sentence, you will
lose your right to vote in Idaho? (ID. CONST. art. 6, §
3) YES NO

36. Do you understand that if you plead guilty to a
felony, during the period of your sentence, you will
lose your right to hold public office in Idaho? (ID.
CONST. art. 6, § 3) YES NO

37. Do you understand that if you plead guilty to a
felony, during the period of your sentence, you will
lose your right to perform jury service in Idaho? (ID.
CONST. art. 6, § 3) YES NO

38. Do you understand that if you plead guilty to a
felony you will lose your right to purchase, possess, or
carry firearms? (I.C. § 18-310) YES NO

39. Do you understand that no one, including your
attorney, can force you to plead guilty in this case? YES NO

40. Are you entering your plea freely and voluntarily? YES NO

41. Are you pleading guilty because you did commit
the acts alleged in the information or indictment? YES NO

42. If you were provided with an interpreter to help
you fill out this form, have you had any trouble understanding
your interpreter? YES NO

43. Have you had any trouble answering any of the
questions in this form which you could not resolve by
discussing the issue with your attorney? YES NO

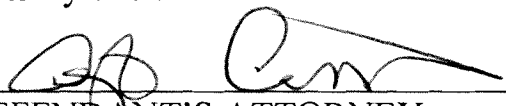
I have answered the questions on each page of this Guilty Plea Advisory form truthfully, I understand all of the questions and answers in this form, and I have discussed each question and answer with my attorney, and have completed this form freely and voluntarily. Furthermore, no one has threatened me to do so.

Dated this day of Aug 3, 2009.



DEFENDANT

I hereby acknowledge that I have discussed, in detail, the foregoing questions and answers with my client.



DEFENDANT'S ATTORNEY

SENTENCING MEMO

DATE: Aug 18, 2009 DEFENDANT PRESENT (Y)N CUSTODY/BOND

FROM: Judge Deborah Bail/ Carol Luedtka/ Susan Gambee

CASE: STATE v John Delling No. C20700663/CR0701625

Prosecutor: Roger Bourne Heath Kelly Defense Counsel Bill Thompson Chris' Murphy Don Cabell

State recommends: _____

Defense recommends: _____

Interpreter _____

COURT: ☐ Judgment Withheld; _____ years of probation

☐ Judgment of Conviction

Term of years= _____ fixed followed by _____ indeterminate for a total: _____

☐ RETAINED JURISDICTION ☐ COMMUTED _____

☐ SUSPENDED, CONDITIONS OF PROBATION:

1. Counseling as directed by P.O. with proof of attendance, and specifically:
Mental health counseling, Substance abuse counseling, Vocational Rehabilitation,
Cognitive Self-Change, 90 days AA in 90 days, Anger Management, Parenting Classes
Other: _____
2. Restitution: \$ _____ or State has _____ days to provide restitution figure; Defense has
_____ days to object. Joint and Several
3. Defendant shall be subject to random blood, breath and urinalysis.
4. Defendant is subject to search of person, property, and residence and waives 4th Amendment rights
5. Defendant shall maintain full time employment.
6. Defendant shall maintain full time employment or be involved in a full time educational program with the approval of his or her P.O.
7. Defendant shall not refuse any blood alcohol content tests.
8. Defendant may not purchase, posses or consume any alcohol.
9. Defendant shall not frequent any establishment where the sale of alcohol is the primary business.
10. Defendant shall not own, carry or have in his/her possession any firearms or other weapons.
11. Probation may be transferred to the State of _____
12. Defendant shall take all medications prescribed by his or her attending physician and shall provide a copy of the prescription to his/her P.O.
13. Defendant shall complete his/her GED/HSE.
14. Defendant shall not associate with individuals specified by P.O.
15. Defendant shall have no contact with any minor children.

ADA COUNTY JAIL _____ DISCRETIONARY JAIL TO PO _____

Additional conditions: _____

Mr Bourne introduces Bill Thompson - Latah Co Prosecutor.

Def will begin with their witnesses

00333

CRIMINAL CASE FILE MEMO

Sentencing

DATE: Aug 18, 2009 DEFENDANT PRESENT Y/N CUSTODY/BOND

FROM: Judge Deborah Bail/ Carol Luedtka/ Susan Garbee

RE: State v John Delling CASE NO. CR0700663/CR0701625

Counsel for the State Roger Bourne / Heather Kelly / Bill Thompson

Counsel for the Defendant Amel Myshin / Sus Cahill

Interpreter

Plea Bargain

Mr Myshin calls Dr Woods, sworn, direct exam. Dr Woods makes a diagram. Ct takes a short break. Ct resumes - Dr Woods is still on the stand.

Mr Bourne has no question - witness is excused. Mr Bourne calls Dr Eagle, sworn, direct exam.

Mr Myshin has cross - witness is excused.

Mr Myshin recalls Dr Woods, direct exam. Mr Bourne has cross-exam. Witness is excused.

Mr Bourne addresses the Court. Mr Cahill asks for a short break. Ct takes a short break. Ct resumes.

Mr Cahill calls Carol Delling, sworn, direct exam. Mr Cahill has pictures shown on Elmo, witness is excused.

Mr Bourne calls Rick Boss for a victim impact statement. That is all the victim impact statements + witnesses.

Ct breaks for lunch. Ct resumes. Mr Bourne gives closing arguments + asks for fixed life sentence.

Motion for Bond Reduction - circle/ Not Advanced/ Withdrawn Denied Granted

Additional Remarks (include anything the defendant or either counsel was told)

Mr Cahill gives closing arguments + asks the Ct to put in its Order to provide w/ treatment. Mr Bourne asks to leave restitution open. Ct takes a short break. Ct resumes. Mr Delling makes a statement to the Ct. Court pronounces sentence - fixed life - concurrent w/ treatment

00334

AUG 19 2009

J. DAVID NAVARRO, Clerk
By *[Signature]* DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.) Case No. CRFE07001625
)
JOHN JOSEPH DELLING,) JUDGMENT AND COMMITMENT
)
Defendant.)

On the 18th day of August, 2009, before the Honorable Deborah A. Bail,
District Judge, personally appeared Roger Bourne, Deputy Prosecuting Attorney for
the County of Ada, State of Idaho, and the defendant with his attorney, Amil Myshin,
for the pronouncement of judgment in this case.

The defendant has been convicted upon a plea of guilty to the offense of
MURDER IN THE SECOND DEGREE, FELONY, I.C. §18-4001, 4002, 4003(g), of
the Amended Information. The Court asked the defendant if he had any legal cause to
show why judgment should not be pronounced against him. No objection was made
by either the State or the Defense to the entry of judgment.

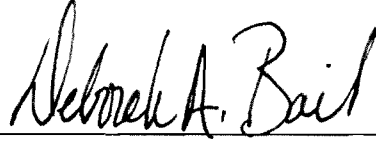
IT IS ADJUDGED that the defendant is sentenced pursuant to Idaho Code §19-
2513 to the custody of the Idaho State Board of Correction to be held and incarcerated
by said Board in a suitable place for a period of time as follows:

1 For a fixed and determinate period of confinement of life, and shall run
2 concurrent to Case No. H0700663.
3

4 IT IS FURTHER ORDERED that the defendant is committed to the custody of
5 the Sheriff of Ada County, Idaho, for delivery forthwith to the custody of the Idaho
6 State Board of Correction at the Idaho State Penitentiary or other facility within the
7 state designated by the State Board of Correction.
8

9 IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this
10 Judgment and Commitment to the said Sheriff, which shall serve as the commitment
11 of the defendant.
12

13 Done in open court this 18th day of August, 2009.
14

15 
16 _____
17 DEBORAH A. BAIL
18 District Judge
19
20
21
22
23
24
25
26
27
28
29

CERTIFICATE OF MAILING

I hereby certify that on this 19th day of August, 2009, I mailed (served) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR
INTERDEPT MAIL

ADA COUNTY PUBLIC DEFENDER
INTERDEPT MAIL

ADA COUNTY JAIL
INTERDEPT MAIL

DEPARTMENT OF CORRECTION
CENTRAL RECORDS
1299 NORTH ORCHARD STE 110
BOISE ID 83706

PROBATION & PAROLE-PSI DEPARTMENT
INTERDEPT MAIL-PICKUP BOX

J. DAVID NAVARRO
Clerk of the District Court

By: Jana Therrien
Deputy Court Clerk

00337

SEP 15 2009

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|-----------------------|---|---------------------------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff-Respondent, |) | |
| |) | |
| vs. |) | Criminal No. CR-FE-2007-0001625 |
| |) | |
| |) | NOTICE OF APPEAL |
| JOHN JOSEPH DELLING, |) | |
| |) | |
| Defendant-Appellant. |) | |
| |) | |

TO: THE ABOVE NAMED RESPONDENT, GREG BOWER, ADA COUNTY
PROSECUTOR, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Defendant, appeals against the State of Idaho to the Idaho Supreme Court from the final Decision and Order entered against him in the above-entitled action on the 18TH day of AUGUST, 2009, the Honorable Deborah Bail, District Judge, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph one (1) above is appealable pursuant to I.A.R. 11(c)(1).
3. That the Defendant requests the entire reporter's standard transcript as defined in Rule 25(a), I.A.R.

4. The Defendant also requests the preparation of the following additional portions of the reporter's transcript:

Hearing held: AUGUST 18, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 250

Hearing held: JULY 14, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 250

Hearing held: JUNE 2, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

Hearing held: MAY 27, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

Hearing held: MAY 8, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 100

Hearing held: APRIL 23, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

Hearing held: MARCH 23, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

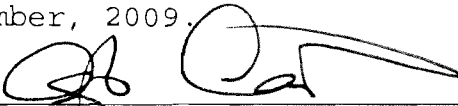
Hearing held: JANUARY 30, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

Hearing held: JANUARY 27, 2009
Court Reporter: S. GAMBEE
Number of Transcript Pages for this
hearing estimated: 50

5. The Defendant requests that the clerk's record contain only those documents automatically included as set out in I.A.R. 28(b)(2), including the Grand Jury Transcript if Indicted, any Jury Instructions requested and given, Pre-Sentence Investigation Report and copy of Rule 11 Agreement, memoranda supporting motion to declare statute unconstitutional.
6. I certify:
 - a) That a copy of this Notice of Appeal has been served on the reporter.
 - b) That the Defendant is exempt from paying the estimated transcript fee because he is an indigent person and is unable to pay said fee.
 - c) That the Defendant is exempt from paying the estimated fee for preparation of the record because he is an indigent person and is unable to pay said fee.
 - d) That the Defendant is exempt from paying the appellate filing fee because he is indigent and is unable to pay said fee.
 - e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.
7. That the Defendant anticipates raising issues including, but not limited to:
 - a) "Did the district court abuse its discretion by sentencing the defendant to a determinate life sentence?"
 - b) The Court's denial of the Defendant's Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and § 18-209 Unconstitutional and Objection to Access to Defendant by State's Experts. This issue involves claimed violations of Defendant's right under the 5th, 6th, 8th and 14th Amendments to United States

Constitution and Article I Sections 2,7
and 13 of Idaho Constitution.

DATED This 14th day of September, 2009.



AUGUST H. CAHILL
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on the 14TH day of SEPTEMBER, 2009, I
mailed a true and correct copies of the foregoing, NOTICE OF
APPEAL to:

LAWRENCE G. WASDEN, ATTORNEY GENERAL, and

S. GAMBEE, HONORABLE JUDGE DEBORAH BAIL'S COURT REPORTER
by depositing the same in the Interdepartmental Mail.



ALISA O'NEAL

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front St., Ste. 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

RECEIVED
SEP 15 2009
ADA COUNTY CLERK

NO. _____
FILED _____
A.M. _____ P.M. 2:30
SEP 15 2009
J. DAVID NAVARRO, Clerk
By [Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| | | |
|-----------------------|---|---------------------------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff-Respondent, |) | Criminal No. CR-FE-2007-0001625 |
| |) | |
| vs. |) | |
| |) | |
| JOHN JOSEPH DELLING, |) | ORDER APPOINTING STATE |
| |) | APPELLATE PUBLIC DEFENDER |
| Defendant-Appellant. |) | ON DIRECT APPEAL |
| |) | |

The above-named Defendant, JOHN JOSEPH DELLING, being indigent and having heretofore been represented by the Ada County Public Defender's Office in the District Court, and said Defendant having elected to pursue a direct appeal in the above-entitled matter;

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Idaho State Appellate Public Defender is appointed to represent the above named Defendant, JOHN JOSEPH DELLING, in all matters pertaining to the direct appeal.

DATED This 15th day of SEPTEMBER, 2009.

[Signature: Deborah A. Bail]
DEBORAH BAIL
District Judge

ORDER APPOINTING STATE APPELLATE
PUBLIC DEFENDER ON DIRECT APPEAL

00342

NOV 03 2009

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ORIGINAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

JOHN JOSEPH DELLING,

Defendant-Appellant.

CASE NO. CR 2007-1625

S.C. DOCKET NO. 36921

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, GREG BOWER, ADA COUNTY PROSECUTOR, 200 WEST FRONT STREET 3RD FLOOR, BOISE, ID, 83702, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment and Commitment entered in the above-entitled action on the 19th day of August, 2009, the Honorable Deborah A. Bail, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in failing to grant the appellant's Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and § 18-209 Unconstitutional and Objection to Access to Defendant by State's Experts? This issues involves claimed violations of Defendant's right under the 5th, 6th, 8th, and 14th Amendments to the Unites States Constitution and Article I Sections 2, 7, and 13 of the Idaho Constitution.

(b) Did the district court abuse its discretion by imposing and excessive sentence?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. Reporter's Transcript. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) Hearing held on August 18, 2009 (Court Reporter: Susan Gambee, estimation of pages);

(b) Hearing held on July 14, 2009 (Court Reporter: Susan Gambee, estimation of 250 pages);

- (c) Hearing held on April 11, 2009 (Court Reporter: Susan Gambee, estimation of less than 100 pages);

6. Clerk's Record. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and § 18-209 Unconstitutional and Objection to Access to Defendant by State's Experts, filed or lodged, by the state, appellant or the court including, but not limited to the Objection to Access to Defendant by State's Experts and Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and 209 Unconstitutional filed July 24, 2009;
- (b) Affidavit of Probable Cause filed April 3, 2007;
- (c) Affidavit of Search Warrant filed April 3, 2007;
- (d) Search Warrant filed April 11, 2007;
- (e) Return of Search Warrant filed April 11, 1007;
- (f) Supplemental Return of Search Warrant filed April 12, 2007;
- (g) Stipulation of Transfer filed July 8, 2009;
- (h) Notice of Intent to Produce Evidence Pursuant to I.C. § 18-207 filed July 24, 2009;


- (i) Objection to Access to Defendant by State's Experts and Motion to Declare I.C. § 18-207 and Repeal of I.C. § 18-208 and 209 Unconstitutional filed July 24, 2009;
- (j) Memorandum lodged July 24, 2009;
- (k) Stipulation for Plea Agreement filed August 3, 2009;
- (l) Guilty Plea Advisory filed August 3, 2009; and
- (m) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Susan Gambee;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Ada County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and

- (e) That service has been made upon all parties required to be served pursuant to I.A.R 20.

DATED this 3rd day of November, 2009.



MOLLY J. HUSKEY
State Appellate Public Defender

CERTIFICATE OF MAILING


I HEREBY CERTIFY that I have this 3rd day of November, 2009, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

AUGUST H CAHILL
ADA COUNTY PUBLIC DEFENDERS OFFICE
200 W FRONT ST DEPARTMENT 17
BOISE ID 83702
STATEHOUSE MAIL

SUSAN GAMBEE
COURT REPORTER
200 W FRONTST
BOISE ID 83702 7300

GREG BOWER
ADA COUNTY PROSECUTORS OFFICE
200 WEST FRONT STREET 3RD FLOOR
BOISE ID 83702
STATEHOUSE MAIL

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720 0010
Hand delivered to Attorney General's mailbox at Supreme Court



HEATHER R. LEWIS
Administrative Assistant

MJH/TMF/SBT/hrl

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

FILED
A.M. P.M. 4
DEC 08 2009
J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

JOHN J. DELLING,

Defendant.


Case No. CR-FE-2007-0001625

MOTION FOR RECONSIDERATION
OF SENTENCE AND FOR LEAVE

COMES NOW, JOHN J. DELLING, the defendant above-named, by and through counsel AUGUST H. CAHILL, Ada County Public Defender's Office, and moves this Honorable Court pursuant to ICR 35 for its reconsideration of sentence upon the grounds and for the reason that the defendant requests leniency.

The defendant further asks that the Court grant leave in order to further supplement the motion with supporting documentation and/or other evidence.

DATED, this 8 day of December 2009.

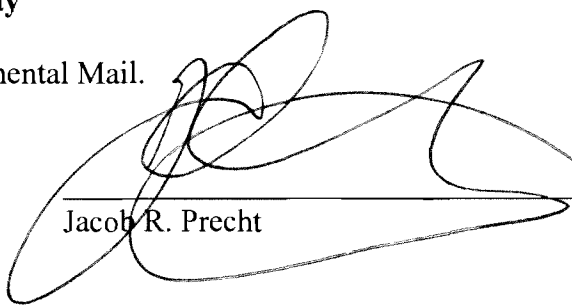

AUGUST H. CAHILL
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 8 day of December 2009, I mailed a true and correct copy of the within instrument to:

ROGER A. BOURNE
Deputy Prosecutor, Ada County

by placing said same in the Interdepartmental Mail.


Jacob R. Precht

NO. _____
A.M. _____ FILED P.M. _____ 4

DEC 30 2009

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

JOHN JOSEPH DELLING,

Defendant.

Case No. CR-FE-2007-0001625

MOTION FOR PROGRESS REPORT


COMES NOW, JOHN JOSEPH DELLING, the defendant above-named, by and through counsel AUGUST H. CAHILL, Ada County Public Defender's Office, and moves this Court to **ORDER** the Idaho Department of Correction to inform the Court, by written report, of the defendant's progress and adjustment since being sentenced to the penitentiary.

The defendant makes this motion upon the grounds and for the reasons that such a report will assist the Court in review of the defendant's recently filed Rule 35 Motion.

The defendant requests that the Idaho Department of Correction be given sixty (60) days in which to file said progress report. The defendant further requests that the Court postpone

ruling on the defendant's motion until after the Court has had time to review the defendant's progress report.

DATED, this 30 day of December 2009.



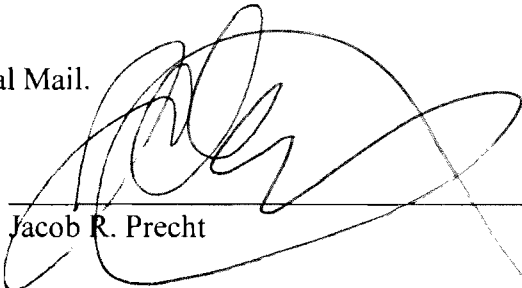
AUGUST H. CAHILL
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 30 day of December 2009, I mailed a true and correct copy of the within instrument to:

ROGER BOURNE
Ada County Prosecutor's Office

by placing said same in the Interdepartmental Mail.



Jacob R. Precht

NO. _____ FILED
A.M. 8:00 P.M. _____

JAN 06 2010

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

To: Clerk of the Court
Idaho Supreme Court
Boise, Idaho 83720

Docket No. 36920-2009


STATE OF IDAHO
Vs.
JOHN JOSEPH DELLING

Notice of Transcript Filed

Notice is hereby given that on October 28, 2009, I lodged a transcript of
766 pages in length for the above-referenced appeal with the District
Court Clerk of the County of Ada, in the Fourth Judicial District.

This transcript contains hearings held on:

.. 5/21/07, 6/4/07
.. 2/20/08, 2/27/08, 11/17/08, 12/4/08
.. 1/27/09, 1/30/09, 3/23/09, 4/23/09, 5/8/09, 5/27/09, 6/2/09, 7/14/09, 8/3/09 &
8/18/09



Susan G. Gambee, RMR, CSR No. 18
Ada County Courthouse
200 West Front Street
Boise, Idaho 83702
(208) 287-7581

00353

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

JOHN JOSEPH DELLING,

Defendant-Appellant.

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

JOHN JOSEPH DELLING,

Defendant-Appellant.

Supreme Court Case No. 36920

CERTIFICATE OF EXHIBITS

Supreme Court Case No. 36921

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal.

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Pre-Sentence Investigation Report.
2. Def Exhibit A – Dr. Estess Mental Health Notes, admitted January 30, 2009.
3. Transcript of Grand Jury Hearing Held May 15, 2007, Boise, Idaho, filed July 31, 2007.

I FURTHER CERTIFY, that the following will be submitted as an EXHIBIT to the Record:

1. Compact Disc – attached to – State's Motion To Admit Idaho Rule Of Evidence 404(b) Evidence, filed February 27, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 6th day of January, 2010.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF EXHIBITS

00354

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Deborah Bail/C. Luedtka
District Judge Clerk

January 27, 2009

STATE OF IDAHO,

Plaintiff,

vs.

JOHN DELLING,

Defendant.

EXHIBIT LIST

Case No. CR07-00663

MOTION RE: 18-212

Plaintiffs Counsel:
ROGER BOURNE
PROSECUTING ATTORNEY

Defendants Counsel:
GUS CAHILL/AMIL MYSHIN
PUBLIC DEFENDER

| BY | NO. | DESCRIPTION | STATUS | DATE |
|----|-----|-------------------------------|----------|----------|
| ST | 1 | CLINICAL INTERVIEW | ADMITTED | 01/27/09 |
| ST | 2 | GEORGIA CT COMPETENCY | ADMITTED | 01/27/09 |
| ST | 3 | ECST-R RECORD FORM | ADMITTED | 01/27/09 |
| ST | 4 | DELLINGS COMMISSARY SHEET | ADMITTED | 01/27/09 |
| DE | A | Dr Estess Mental Health Notes | Admitted | 1/30/09 |

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Deborah Bail/J. Korsen
District Judge Clerk

MAY 8, 2009

STATE OF IDAHO,

Plaintiff,

vs.

JOHN DELLING,

Defendant.

EXHIBIT LIST

Case No. CRFE0700663

PTC & MOTION TO SUPPRESS

Plaintiffs Counsel:
ROGER BOURNE
PROSECUTING ATTORNEY

Defendants Counsel:
AMIL MYSHIN/GUS CAHILL
PUBLIC DEFENDERS

| <u>BY</u> | <u>NO.</u> | <u>DESCRIPTION</u> | <u>STATUS</u> | <u>DATE</u> |
|-----------|------------|--------------------|---------------|-------------|
| ST | 1 | DVD | ADMITTED | 5/8/09 |
| ST | 2 | DVD | ADMITTED | 5/8/09 |
| ST | 3 | DVD | ADMITTED | 5/8/09 |
| ST | 4 | DVD | ADMITTED | 5/8/09 |
| ST | 5 | DVD | ADMITTED | 5/8/09 |
| ST | 6 | DVD | ADMITTED | 5/8/09 |
| ST | 7 | DVD | ADMITTED | 5/8/09 |

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Deborah Bail/C. Luedtka
District Judge Clerk

June 2, 2009

STATE OF IDAHO,

Plaintiff,

vs.

JOHN DELLING,

Defendant.

EXHIBIT LIST

Case No. CRFE200700663

HEARING

Plaintiffs Counsel:
ROGER BOURNE/HEATHER REILLY
PROSECUTING ATTORNEY

Defendants Counsel:
AMIL MYSHIN/GUS CAHILL
PUBLIC DEFENDER

| BY | NO. | DESCRIPTION | STATUS | DATE |
|----|-----|-------------|----------|--------|
| ST | 1 | PHOTO | ADMITTED | 6/2/09 |
| ST | 2 | PHOTO | ADMITTED | 6/2/09 |
| ST | 3 | DIAGRAM | ADMITTED | 6/2/09 |
| ST | 4 | PHOTO | ADMITTED | 6/2/09 |
| ST | 5 | PHOTO | ADMITTED | 6/2/09 |
| ST | 6 | PHOTO | ADMITTED | 6/2/09 |
| ST | 7 | PHOTO | ADMITTED | 6/2/09 |
| ST | 8 | PHOTO | ADMITTED | 6/2/09 |
| ST | 9 | PHOTO | ADMITTED | 6/2/09 |
| ST | 10 | PHOTO | ADMITTED | 6/2/09 |

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Deborah Bail/C. Luedtka/J. Korsen
District Judge Clerk

July 14, 2009

State of Idaho,

Plaintiff,

vs.

John Delling,

Defendant.

EXHIBIT LIST

Case No. CRFE0700663

SENTENCING

Plaintiffs Counsel:
Roger Bourne
Heather Reilly
PROSECUTING ATTORNEY

Defendants Counsel:
Amil Myshin
Gus Cahill
PUBLIC DEFENDER

| BY | NO. | DESCRIPTION | STATUS | DATE |
|-------|-----|-------------------------------|----------|---------|
| State | 11 | Picture of Gunshot Wound | Admitted | 7-14-09 |
| State | 12 | Picture of Gunshot Wound | Admitted | 7-14-09 |
| State | 13 | Picture of Gunshot Wound | Admitted | 7-14-09 |
| State | 14 | Picture of Apartment Building | Admitted | 7-14-09 |
| State | 15 | Picture of Deceased Victim | Admitted | 7-14-09 |
| State | 16 | Picture of Deceased Victim | Admitted | 7-14-09 |
| State | 17 | Picture of Deceased Victim | Admitted | 7-14-09 |
| State | 18 | Picture of Car | Admitted | 7-14-09 |
| State | 19 | Picture of Target Bag | Admitted | 7-14-09 |
| State | 20 | Picture of Car Keys | Admitted | 7/14/09 |
| State | 21 | Picture of John Delling | Admitted | 7-14-09 |
| State | 22 | Picture of John Delling | Admitted | 7-14-09 |
| State | 23 | Video of Police Interview | Admitted | 7-14-09 |

| | | | | |
|-------|----|------------------------------------|----------|---------|
| State | 24 | Bill of Sale - Firearms | Admitted | 7-14-09 |
| State | 25 | Letter to Tim from John Delling | Admitted | 7-14-09 |
| State | 26 | Contract for Enterprise Rent-a-Car | Admitted | 7-14-09 |
| State | 27 | Aerial View of Warm Springs Ave. | Admitted | 7-14-09 |
| State | 28 | Picture of Bloody Drag Marks | Admitted | 7-14-09 |
| State | 29 | Picture of Bloody Drag Marks | Admitted | 7-14-09 |
| State | 30 | Picture of Bloody Drag Marks | Admitted | 7-14-09 |
| State | 31 | Picture of Bloody Drag Marks | Admitted | 7-14-09 |
| State | 32 | Picture of Bloody Drag Marks | Admitted | 7-14-09 |
| State | 33 | Photo-Wallett | Admitted | 7/14/09 |
| State | 34 | Photo-Gun | Admitted | 7/14/09 |
| State | 35 | Photo-Ammo | Admitted | 7/14/09 |
| State | 36 | Photo-Gun | Admitted | 7/14/09 |
| State | 37 | Photo-Car | Admitted | 7/14/09 |
| State | 38 | Receipt -Ammo | Admitted | 7/14/09 |
| State | 39 | Photo-Box of Ammo | Admitted | 7/14/09 |
| State | 40 | Photo of great clips receipt | Admitted | 7/14/09 |
| State | 41 | Bill of Sale | Admitted | 7/14/09 |
| State | 42 | PO Travel Permit | Admitted | 7/14/09 |
| State | 43 | To Do List | Admitted | 7/14/09 |
| State | 44 | Bill of sale of gun | Admitted | 7/14/09 |
| State | 45 | To do list | Admitted | 7/14/09 |
| State | 46 | Hand Written Notes | Admitted | 7/14/09 |
| State | 47 | Cell phone agreement | Admitted | 7/14/09 |
| State | 48 | Cell phone info | Admitted | 7/14/09 |
| State | 49 | Veterans service plan | Admitted | 7/14/09 |
| State | 50 | Class schedule | Admitted | 7/14/09 |
| State | 51 | Invoice-armory | Admitted | 7/14/09 |
| State | 52 | Printout of classified ads | Admitted | 7/14/09 |
| State | 53 | Printout of people search | Admitted | 7/14/09 |

| | | | | |
|-------|----|-----------------------|----------|---------|
| State | 54 | Writing from journal | Admitted | 7/14/09 |
| State | 55 | Papers from def room | Admitted | 7/14/09 |
| State | 56 | Photo-inside Mazda | Admitted | 7/14/09 |
| State | 57 | Photo-inside Mazda | Admitted | 7/14/09 |
| State | 58 | Photo-Mazda trunk | Admitted | 7/14/09 |
| State | 59 | Airline Ticket | Admitted | 7/14/09 |
| State | 60 | Airline Ticket Holder | Admitted | 7/14/09 |
| State | 61 | ATM receipt | Admitted | 7/14/09 |
| State | 62 | Mid term papers | Admitted | 7/14/09 |
| State | 63 | 1040 tax forms | Admitted | 7/14/09 |
| State | 64 | Track phone | Admitted | 7/14/09 |
| State | 65 | Photo of pants | Admitted | 7/14/09 |
| State | 66 | Photo-price of pants | Admitted | 7/14/09 |
| State | 67 | Contents of wallet | Admitted | 7/14/09 |
| State | 68 | Receipt | Admitted | 7/14/09 |
| State | 69 | Bus pass | Admitted | 7/14/09 |
| State | 70 | Spread sheet | Admitted | 7/14/09 |
| State | 71 | Yahoo info | Admitted | 7/14/09 |
| State | 72 | Craig's list info | Admitted | 7/14/09 |
| State | 73 | DVD of Interview | Admitted | 7/14/09 |
| State | 74 | Craig's List Ad | Admitted | 7/14/09 |
| State | 75 | Craig's List Ad | Admitted | 7/14/09 |
| State | 76 | E-Mail Trail | Admitted | 7/14/09 |
| State | 77 | E-Mail Exchange | Admitted | 7/14/09 |
| State | 78 | E-Mail Exchange | Admitted | 7/14/09 |
| State | 79 | E-Mail Exchange | Admitted | 7/14/09 |
| State | 80 | CD/Oths Hearing | Admitted | 7/14/09 |

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| |
|---|
| STATE OF IDAHO, Plaintiff-Respondent, vs. JOHN JOSEPH DELLING, Defendant-Appellant. |
| STATE OF IDAHO, Plaintiff-Respondent, vs. JOHN JOSEPH DELLING, Defendant-Appellant. |

Supreme Court Case No. 36920

CERTIFICATE OF SERVICE

Supreme Court Case No. 36921

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: JAN 07 2010

By BRADLEY J. THIES
Deputy Clerk

SEAL

CERTIFICATE OF SERVICE

00361

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

| |
|---|
| STATE OF IDAHO, Plaintiff-Respondent, vs. JOHN JOSEPH DELLING, Defendant-Appellant. |
| STATE OF IDAHO, Plaintiff-Respondent, vs. JOHN JOSEPH DELLING, Defendant-Appellant. |

Supreme Court Case No. 36920

CERTIFICATE TO RECORD

Supreme Court Case No. 36921

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 15th day of September, 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE TO RECORD

00362